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**ORIGINAL**  
**UNITED STATES**  
**NUCLEAR REGULATORY COMMISSION**

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**IN THE MATTER OF:**

**DOCKET NO:**

**STREAMLINING THE LICENSING PROCESS**

**AND DEMONSTRATING THE LICENSING**

**SUPPORT SYSTEM**

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
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6 STREAMLINING THE LICENSING PROCESS  
7 and  
8 DEMONSTRATING THE LICENSING  
9 SUPPORT SYSTEM  
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16 Held at  
17 Zeus Room  
18 Alexis Park Hotel  
19 375 East Harmon Avenue  
20 Las Vegas, Nevada

21  
22 Tuesday  
23 April 29, 1986  
24  
25

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P R O C E E D I N G S

8:50 a.m.

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2  
3 MR. BUNTING: My name is Joe Bunting. I am from  
4 the NRC Division of Waste Management. I would like to wel-  
5 come you all to our first ever meeting of states and tribes  
6 to discuss the activities of the Commission that we have in  
7 the way pursuant to the Nuclear Waste Policy Act.

8 Since this is our first one and the Act has been  
9 in place for three years, we don't often do this but we have  
10 been working on a number of things that in the future are  
11 going to involve you, and we thought it would be worthwhile,  
12 we know enough now to get you all together to give you a  
13 status report on where we stand on this activity, and we're  
14 here to get your feedback -- hopefully, positive, critical  
15 feedback -- so that we can make this a very productive  
16 process that we're working on.

17 I'm going to turn the meeting over now to Cathy  
18 Russell, but before I do I'd like to mention that we do have  
19 a reporter here from the Commission and we do want to make  
20 this informal, so if you have questions please find yourself  
21 a microphone and identify yourself so the reporter can get  
22 that down.

23 Tomorrow morning we'll be back together, it will  
24 be a little bit more informal, and Cathy will go over the  
25 agenda for you. But principally it's going to be to hear

1 you. Today we'd like to tell you what we've got to tell  
2 you, and tomorrow we'd like to get any comments and criti-  
3 cisms that you might have.

4 We don't mind that you stop us as we go along and  
5 ask points of clarification. Feel free to do that as the  
6 day progresses.

7 I'll turn you over now to Cathy Russell.

8 MS. RUSSELL: Good morning. We appreciate you  
9 all coming here to the meeting, and a couple of things that  
10 we'd like to get out of the way in terms of administrative  
11 things, I'll go over those real quickly.

12 One, for anybody who has not, we would appreciate  
13 if you would sign up. That way the transcript, once it's  
14 developed, we will be able to send out to all of the people  
15 who in fact were here.

16 And we would also appreciate if you would get a  
17 name tag to put on because we've got a lot of new people  
18 and we'd like to know who we're talking with.

19 We also want to welcome particularly those people  
20 who are in the second round Crystalline program. I know  
21 this is probably the first time any of them have been in-  
22 volved in an NRC meeting, and we realize that we probably  
23 need to talk with you in a very general way about the NRC  
24 program and we would be very happy to do that tomorrow be-  
25 cause we've got a little more time built into our agenda.

1           The first thing that we'd like to do, too, is I  
2 want to introduce you to the people here from NRC who will  
3 be doing the presentations here today.

4           The gentleman who started the meeting is Joe  
5 Bunting, and he's the chief of the Policy and Program Con-  
6 trol Branch in the Division of Waste Management.

7           Sitting next to him is Ken Kalman, and he is one  
8 of our project managers. He'll be discussing negotiated  
9 rulemaking with you.

10          Sitting next to him is Chip Cameron, and he's a  
11 senior attorney working on the Nuclear Waste Program.

12          And sitting next to him is Paul Prestholt. He  
13 is our on-site licensing representative for the Nevada  
14 program.

15          On this side, this is Mr. Avi Bender, and Avi is  
16 the project manager for the pilot project for the licensing  
17 support system.

18          And sitting next to him is Phil Altomare, and he  
19 is the section leader that has the oversight on the licens-  
20 ing support system.

21          Also in the audience we have a gentleman named  
22 Larkins. John, could you stand up?

23          John is going to be working for the new chairman,  
24 Mr. Zech of the Commission, doing nuclear waste matters.  
25 So we welcome you. This is his first kind of entree into

1 the program also.

2 It may take a few minutes but I would appreciate  
3 it if perhaps we could go around the room and people could  
4 say who they are and who they're with just so we all have a  
5 general idea of who is here. Would that be satisfactory?

6 MR. HEAD: I'm Charles Head. I'm with DOE  
7 Headquarters Licensing.

8 MR. LARKINS: John Larkins, Office of the  
9 Commission.

10 MR. STEVENS: David Stevens, consultant.

11 MR. BRADHURST: Steve Bradhurst, consultant.

12 MR. ZIEGLER: Jim Ziegler, White Earth Reservation.

13 MR. WILCOX: Dwight Wilcox, White Earth Reserva-  
14 tion.

15 MR. CLAUSEN: Bill Clausen, State of Minnesota.

16 MS. LEHMAN: Linda Lehman, State of Minnesota.

17 MR. NEWMAN: Harry Newman, State of North Caro-  
18 lina.

19 MS. SPRUILL: Lisa Spruill, Mississippi.

20 MR. CHRISTY: Don Christy, State of Mississippi.

21 MS. ZIMMERMAN: Susan Zimmerman, Texas.

22 MR. FRISHMAN: Steve Frishman, Texas.

23 MR. TINSLEY: Tom Tinsley, Science Applications  
24 International.

25 MS. HATCH: Karen Hatch, DOE, Nevada operations.

MR. ERNSTUN: Kutret Ernstun, Mississippi.

1 MR. DAWSON: David Dawson, Science Applications  
2 International.

3 MR. TOUSLEY: Dean Tousley of Harmon & Weiss for  
4 Yakima Nation.

5 MR. WITTMAN: Jack Wittman of Utah.

6 MR. JOHNSON: Carl Johnson, Nevada.

7 MR. DAVENPORT: Jim Davenport, Washington.

8 MS. KANY: Judy Kany, State of Maine.

9 MS. ATTEAN: Priscilla Attean, Penobscot Nation.

10 MR. STEELE: Al Steele, Passamaquoddy Tribe.

11 MR. SCHLENDER: James Schlender, Lac Courte  
12 Orielles Tribe.

13 MR. RUGER: Alan Ruger, GLIFWC.

14 MR. WOODBURY: David Woodbury, State of Wisconsin.

15 MR. HESTER: Dan Hester, Umatilla Tribe.

16 MS. BRONSON: Ginny Bronson, Umatilla Tribe.

17 MR. HUTCHINS: John Hutchins, Council of Energy  
18 Resources Tribes.

19 MR. HALFMOON: Ron Halfmoon, Nez Perce Tribe.

20 MR. PROVOST: Don Provost, State of Washington.

21 MS. RUNYON: Cheryl Runyon, National Conference  
22 of State Legislatures.

23 MR. VILLEBRUN: David Villebrun, Bois Forte Re-  
24 servation, Minnesota.

25 MS. VELE: Kimberly Vele, Stockbridge-Munsee.

MR. MILLER: Joel Miller, Stockbridge-Munsee Tribe.

1 MR. FLUORNOY: Bill Fluornoy, North Carolina.  
2 MR. BADBOY: Ken Badboy, Bois Fort Reservation.  
3 MR. ROBERTSON: John Robertson, Lower Sioux.  
4 MR. WHITEMAN: William Whiteman, Bois Forte RBC.  
5 MS. LEHMAN: Linda Lehman, State of Minnesota.  
6 MR. GOODTHUNDER: Joe Goodthunder, Lower Sioux  
7 Committee.

8 MR. SHEPHERD: Joe Shepherd, Leech Lake Reserva-  
9 tion.

10 MR. BICHLER: Howard Bichler, St. Croix Chippewa.  
11 MR. ARONSON: H.H. Aronson, Yakima Indians.  
12 MR. ACKLEY: William Ackley, Wisconsin.  
13 MR. ROSS: Dallas Ross, Upper Sioux Committee.  
14 MR. BLUE: Dean Blue, Minnesota.

15 MS. RUSSELL: Okay. We sent out a package of  
16 information for you before the meeting, and for those who  
17 either forgot it or did not get it on the back table there  
18 are copies of all the documents we're going to be talking  
19 with you about today.

20 And now I'd just like to take a couple of minutes  
21 to go through the agenda with you so you have an idea of  
22 what's going to be happening.

23 This is Brian Thomas. He's with NRC. I forgot  
24 because he's quietly sitting there getting ready to do the  
25 view graphs.

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1 resolve that, and Joe's going to talk to you about that in  
2 a little more detail.

3 After that, Avi and Phil are going to kind of  
4 give you an intro to what they're doing on the licensing  
5 support system. And if you look at the agenda, you'll see  
6 that we have four different breaks where they're called  
7 demonstration breaks. Those will take place over there  
8 where the computer is and what we'd like to do is just  
9 perhaps have a quarter of you go over each time and they  
10 will go through the system and how it works with you.

11 Also, the system will be available and someone  
12 will be here all day tomorrow to answer questions or to  
13 help you work the system. So if you have any questions,  
14 want to do something, just let us know.

15 After that, we will be discussing negotiated  
16 rulemaking and that will be Ken and Chip Cameron. And then  
17 we will have the second demonstration of the system and  
18 take time out for lunch.

19 We want to get started back up again at 1:30. At  
20 that time we will be discussing allegations. And then once  
21 again Avi and Phil will talk to you about the pilot project  
22 for the licensing support system.

23 Then we will have the third demonstration break.  
24 Then we will discuss open item resolution. After that,  
25 we will want to talk a little bit about what we're doing

1 with the states and tribes at the NRC. And then discuss  
2 early closure of licensing open items, how that could be  
3 achieved. And then an overview of our current program with  
4 state tribal participation. And then have a final demon-  
5 stration for today.

6 What we would also like is if for tomorrow rep-  
7 resentatives from the states and from the tribes could  
8 perhaps each give us a little bit of a presentation about  
9 what you're doing in your program and where you're going.  
10 Nothing very elaborate, but we would like to at least have  
11 a general idea about what's happening with the various states  
12 and tribes.

13 Also, we will be available, as I said, all day  
14 tomorrow to work on the system, to meet with you -- it's  
15 sort of a flexible day. So if you have anything to discuss,  
16 please feel free to do so.

17 So I guess we'll get started and Joe will be dis-  
18 cussing the five-year plan with you.

19 MR. BUNTING: In the material we sent to you is  
20 a copy of the five-year plan. I'm going to focus on the  
21 differences in the plan as opposed to what was currently  
22 being performed by NRC prior to the issuance of the plan.

23 We kind of laid out the situation and came up  
24 with four goals that we would like to try to achieve in  
25 the next five years, and the first two goals I think you're

1 pretty much familiar with. Those are the typical kinds of  
2 things we have been doing in the past, which is trying to  
3 get guidance to DOE in the form of reg guides, regulations,  
4 and to go through the issue of identification, which we  
5 normally do through the review of documents submitted to  
6 us through DOE, through meetings, consultation and those  
7 kind of things.

8 And that's principally been both generic and  
9 site site specific issue identification.

10 The other goal that we have typically been working  
11 on is to develop our own in-house independent licensing  
12 capability. And here we're talking about the development  
13 of standard review plans, methods, models, and codes.  
14 Those are things we've had underway for quite some time.

15 The two somewhat new efforts that we have in the  
16 plan have to do with formal issue resolution and streamlin-  
17 ing the licensing process.

18 Now, in formal issue resolution we're all harking  
19 back now to the requirement in the NWPA that the Commission  
20 reach a decision within three years after the application  
21 is tendered to the Commission. And the three-year time  
22 frame includes both the time for staff review and for the  
23 licensing board review and for the Commission decision.

24 So that doesn't give the staff an awful lot of  
25 time to do its job. As a matter of fact, when the Act was

1 under discussion in Congress we were asked to comment on  
2 the time and we said that it would take at least 42 months,  
3 and that was a very optimistic estimate on the part of the  
4 staff.

5 As you know, the Act gives us 36 months. We can  
6 take another 12 months for good cause, but ideally wants us  
7 to do our job now in 27 months.

8 So we're all trying our best to do two things  
9 which are coordinated, and that is the formal issue resolu-  
10 tion and streamline the licensing process.

11 Now, the formal issue resolution will contain a  
12 lot of the things that you've been familiar with. This  
13 will be the generic technical positions, the site technical  
14 positions, and the rulemaking. But we're going to go a  
15 little bit further in that effort and we're trying to de-  
16 velop the technical consensus on both generic and sites  
17 specific issue to the extent we can prior to receipt of the  
18 application.

19 So this means the tech staff is going to have to  
20 go a little bit further than what they were before, and  
21 this is where it's going to involve you the states and you  
22 the tribes. If you have particular issues regarding these  
23 technical positions then we need to know what they are and  
24 we need to work out a process by which we can find out that  
25 and have the tech staff address those technical issues and

1 technical concerns and hopefully reach a position where  
2 they're satisfied to defend their position in some formal  
3 mechanism prior to receipt of the application.

4 Now, the kinds of things we had in mind here would  
5 be, for instance, some of the performance criteria which  
6 are intensive. Most of the findings are findings based on  
7 performance. That is, how long the canister will last,  
8 how long the ground water travel time is, do you have re-  
9 trievability. We will never be able to make a three-year  
10 licensing review if we're going to have to argue about and  
11 litigate the methodology during that three-year period.

12 So the kinds of things we have in mind is to try  
13 the best we can to address the question of how, prior to the  
14 receipt of the application. And that's going to involve  
15 a very active rule on your part with us and with the Depart-  
16 ment to come to a resolution on how.

17 Now, as part of streamlining the licensing pro-  
18 cess once the technical staff, your technical staff, have  
19 come to a position that we either agree, we agree to dis-  
20 agree, we know what the reasons are, then in the streamlin-  
21 ing process one of the things we'll be doing is looking for  
22 new ways in which to recheck final decisions on the method  
23 prior to the application.

24 That could involve either rulemaking on method-  
25 ology or it could involve such things as convening a hearing

1 board with a very limited scope just to address those parti-  
2 cular issues.

3 But any formal mechanism that we have not -- I  
4 repeat we have not -- come to any conclusions on what those  
5 mechanisms would be. So if any of you out there have ideas  
6 as to how we could do that, we solicit your input.

7 Moving on now to other activities in the stream-  
8 lining process. That gets us to where we are today and for  
9 the purpose of this meeting. Everything that you're going  
10 to see and hear about from here on out are activities that  
11 we have put in place to further this goal of streamlining  
12 the licensing process, and the efforts that you're going to  
13 be talking about or processes that I just mentioned were  
14 the appropriate processes once we have a technical consensus  
15 or technical position we've resolved it as far as we can  
16 go, then how do we get that formally resolved prior to the  
17 application.

18 We'd like not to have to do that while the clock  
19 is running.

20 We'll be talking about allegations. We'll talk  
21 more about that. Conflict of interest. We would like not  
22 to have conflict of interest charges coming up during that  
23 time because if put in question all the technical programs  
24 that we have in place. So we feel it's very, very important  
25 that we take every effort that we can now to avoid any

1 possible chance of those issues arising at that time.

2 So that's all I'm going to say now about the  
3 five-year plan, and I would like to move on now to the  
4 potential conflict of interest and the FFRDC.

5 As Cathy told you we started almost two years ago  
6 looking into the problems of conflict of interest. We have  
7 had several cases where we have lost contractors, people  
8 that we started off with originally, got them up to speed,  
9 and then we either lose them either to a state or to DOE.

10 And there have been instances in the past in  
11 which the hearing board has called into question the credi-  
12 bility of witnesses testifying on behalf of the staff when  
13 it's shown that those witnesses have also been supportive  
14 of applicants or people who were in the same class as the  
15 applicant.

16 And it diminishes the importance of the testimony  
17 being given in the hearing. So we have met with the Office  
18 of Federal Procurement Policy to try and find ways to get  
19 around the normal procurement process which requires us to  
20 recompute every contract every five years.

21 For those of you who are wondering, we do have  
22 provisions in each contract that says the contractor can  
23 work cannot take the contract that would give him a conflict  
24 of interest.

25 The problem is that if he elects to go ahead and

1 do that, we only have one recourse and that's the terminate  
2 the contract. That leaves us high and dry, we've lost the  
3 technical expertise we spent our money on. More importantly,  
4 we've lost the time that we've taken to develop that exper-  
5 tise. So we start all over again with the very lengthy  
6 procurement process which in many cases takes us nine months  
7 or more to go through the normal procurement process,  
8 identify a new contractor, and the first task is always to  
9 get up the speed, the second task is find out what everybody  
10 else is doing, and the third task is do some work for us.

11 So we've done that now over and over and over,  
12 and we've had some 30 contracts or more in place at the  
13 current time in which each one of these contractors sees  
14 one small piece of the program.

15 Now, also for a minute think beyond just the  
16 repository, and John Davis, who is our office director, has  
17 responsibility for not just the repository program but the  
18 MRS, storage and transportation. Those are activities  
19 that are not performed in the Division of Waste Management.

20 Many of the folks in my branch try to focus and  
21 try to integrate all of those efforts for the Commission.  
22 So the activities that we're talking about go much beyond  
23 just the repository program.

24 Now, when we met with the Office of Procurement  
25 Policy, and that's an office within OMB, they pointed out

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1 to us that there are provisions within the Federal Procure-  
 2 ment Regulations that call for establishing a Federally  
 3 Funded Research and Development Center, commonly termed  
 4 an FFRDC, and that's governed under OMB policy letter  
 5 84 dash 1, and there are certain criteria for setting it up.

6 Basically, the head of the agency has to make a  
 7 finding that he has a requirement that calls for unbiased  
 8 advice and long-term technical continuity of the program.

9 We discussed our concerns with OMB and they felt  
 10 we had a classic case for which these provisions were es-  
 11 tablished.

12 There are some 30 FFRDC's currently established  
 13 in the country. You may recognize them as all of the  
 14 national labs or FFRDC's. The Aerospace Corporation, Jet  
 15 Propulsion Laboratory are examples of Federally Funded  
 16 Research and Development Centers.

17 So we have put together a request which we sent  
 18 to the Commission somewhere around Christmas time and laid  
 19 out our case for the Commission on why we thought we had a  
 20 classic case that would meet the criteria of OMB. And by  
 21 a five to zero vote the Commission voted to let us publish  
 22 a Notice of Intent which is the first step required by OMB.

23 That notice was published sometime in early March  
 24 and the OMB requires that we publish that notice three  
 25 times over a 90-day period. So the second notice has been

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1 published, also. And in the first and second notice, we  
2 also made aware to people who were interested that we have  
3 available for your inspection a partial procurement package  
4 which contained the draft statement of work, the draft  
5 management criteria, and the draft technical criteria. And  
6 I think that's in your hand-out as well.

7 And we did ask commentors to comment on that and  
8 give us advice as to -- I think we have four questions, I  
9 can't remember them all but basically -- do we have anything  
10 in here which unnecessarily drives up the price, do we  
11 have anything in here which would unfairly preclude you from  
12 competing, are there other issues which would be pertinent  
13 to an FFRDC which we have not listed here which you think  
14 we should include, and we ask for the level of specificity  
15 in both the contract and the management and technical  
16 criteria.

17 We ask for those comments in 45 days and the  
18 commentary closed last Friday. I called back this morning  
19 and I think as of Friday night we had comments from 15  
20 different companies. I can characterize them all as saying  
21 there were -- I don't think there were any show stoppers.  
22 We've had no one who argued that we don't need one. We have  
23 had some very good comments on those questions that we asked  
24 that's going to cause us a lot of work to go back and revise  
25 the material we have.

1           We're set up to do that the week of May 6th, and  
2           somewhere towards the middle or latter part of May we will  
3           be back to the Commission with an analysis of those comments  
4           and a recommendation to the Commission either to proceed or  
5           terminate.

6           If we elect to proceed then we would like to ask  
7           the Commission to give us a decision so that in case they  
8           agree with us we can then proceed to publish the Request  
9           for Proposal at the end of the 90-day comment period on  
10          the Notice of Intent, which would be somewhere around June.

11          And we would then give 60 days for people to  
12          prepare a proposal and then we would evaluate the proposal  
13          at that time. And if everything went just like that with-  
14          out any glitches at all, somewhere towards Christmas time  
15          we might be under contract.

16          Now, the question people usually have is how does  
17          this fit in with the other contracts, and the answer to  
18          that question is anything that we do which we think is  
19          going to be important to support our position in this hear-  
20          ing must be absolutely free of conflict of interest. We  
21          must have an arrangement whereby we can insure an institu-  
22          tional continuation to support us in the hearing which is  
23          going to take place way in the future.

24          So Mr. Davis has decided -- and I think rightly  
25          so -- that the importance of the program and the duration

1 over which it's going to be conducted is too important to  
2 rely only on individuals. We feel we must put in place an  
3 institutional arrangement that will be responsible for  
4 standing behind the individuals, for phasing individuals in  
5 as others retire and go on to other things.

6 One of the things again is the mandatory provi-  
7 sions of this contract will be conflict of interest. And  
8 one of the differences as opposed to the current way in  
9 which if you have a conflict you tell us and our only option  
10 is to terminate, under this arrangement we will have the  
11 right of refusal to allow the contractor to take any con-  
12 tract.

13 So he will not be able to place a contract unless  
14 we have been notified and elected not to object. That is  
15 different from approval. It's a question of whether we will  
16 elect to object or not on the basis of conflict of interest.

17 Now, we see this entity we're putting together  
18 not being able to get up to speed on Day One and take on  
19 the entire program we have in place. So we're trying to  
20 put together now a transition plan in which if we do get  
21 it in place what are the most important things that we have  
22 first, and that can be from an absolute point of view where  
23 our technical program stands internally. But also we have  
24 to phase in DOE schedules and what kind of submissions will  
25 DOE be giving us and who do we have on contract now for

1 technical support and are we going to have to retain those  
2 for some period of time until the new guide can pick up that  
3 effort.

4 So it's a major effort that we're doing to bring  
5 this thing into place.

6 We've had no one be able to tell us of any other  
7 alternative other than establishing a Federally Funded  
8 Research and Development Center that would match the  
9 assurances we would get for long-term continuity and freedom  
10 from conflict of interest.

11 Do you have any questions on that that I could  
12 answer now? Yes, sir.

13 Would you identify yourself?

14 MR. WITTMAN: Yes, my name is Jack Wittman.

15 MR. BUNTING: Okay, Jack.

16 MR. WITTMAN: I'm from Utah. I'm just curious  
17 to know what kind of group will bid on this. What dimen-  
18 sions are you looking for?

19 MR. BUNTING: Very interesting question. Of  
20 course you're looking for everything and you'd like for  
21 them to have it now and have all those resources immediately  
22 available.

23 We had to have preliminary conversations with  
24 a number of different concerns. People have called us  
25 expressing interest. Unfortunately, you don't find anybody

1 out there that's got 30 people around twiddling their thumbs  
2 waiting for you, having the right mix of skill: that you  
3 want.

4 So as a part of the criteria we're asking not only  
5 who do you have but what commitments do you have from others  
6 that you can bring on. You know, what time frame. And  
7 that will be part of our evaluation criteria.

8 I guess it's okay for me to list the kinds of  
9 people that have given comments. So far we've gotten com-  
10 ments from SRI, Rand, Mitre, Southwest Research Institute,  
11 Washington State University. That's all I can think off the  
12 top of my head.

13 There were 15 people. Some of them have indicated  
14 that the way that we do have the package worded today they  
15 would find to be objectionable. I think the way we had it  
16 we said we want the right of approval for all contracts.  
17 We're willing to compromise and move it down to an option to  
18 object.

19 Others have said that the requirements we've laid  
20 in to have everything available now is too severe and we  
21 should be more flexible to allow people to give us a plan  
22 to develop that capability.

23 Others have indicated that the way we have the  
24 criteria worded today puts too much emphasis on the tech-  
25 nical aspects of the program. They point out that since

1 this is the first of an undertaking that the policy and  
2 social issues involved there have equal importance. That  
3 is something we're going to have to deal with when we get  
4 back.

5 Any other questions? Linda?

6 Can you come to the microphone? I guess the  
7 reporter can't hear you.

8 MS. LEHMAN: Linda Lehman, State of Minnesota.

9 Joe, I'm curious about the contracts that you've  
10 recently issued out of Waste Management. Your technical  
11 support contracts, for example, hydrology.

12 Will this preclude those contractors from contin-  
13 uing or is there some method by which they can stay on  
14 once this research is established?

15 MR. BUNTING: Okay. Nobody is going to be, to  
16 my knowledge at this moment, cut off in midstream. So  
17 whatever contract obligations we have we will probably,  
18 I'm sure, continue those.

19 There may be some effort on our part to extend  
20 existing contracts to try and bridge gaps. In other words,  
21 if an existing contract runs out and it's maybe two, three,  
22 four months before our time frame can get the FFRDC on  
23 board, we will be looking for ways to scale back the level  
24 of effort and try to bridge that gap. If possible.

25 We may find ourselves, because of who we put this

1 contract with, that we will go ahead and issue other con-  
2 tracts for maybe two or three years in order to have an  
3 orderly phase-in for the new guide.

4 So there's nothing precipitous that would cause  
5 any contract to be stopped now.

6 Any other questions on that?

7 Okay, right now we're caught up with our schedule  
8 at least and I'll turn it over to Avi and Phil. I guess  
9 Phil first.

10 MR. ALTOMARE: You have a hand-out that was given  
11 to you. It's the Pilot Project, Division of Waste Manage-  
12 ment.

13 We're going to use the overhead, but some of you  
14 in the back may have a little trouble seeing it.

15 The Pilot Project is group's responsibilities.  
16 I'm going to give an overview of what the Pilot Project is  
17 all about, then Avi Bender is going to go into a more  
18 detailed description. Afterwards, during the breaks, we'll  
19 be able to give you a demonstration..

20 With all that beep-beep-beep going on at the  
21 computer, I was beginning to worry. I hope it will be all  
22 right.

23 Brian (handling the viewgraphs) is on our planning  
24 staff. We pressed him into service there.

25 The Pilot Project consists of two separate but  
related items. A, what we have referred to as a licensing

1 Information Management System, which is a full-text docu-  
2 ment capture, storage, and retrieval system. And<sup>B,</sup> an open-  
3 item management system, which is a process for identifying  
4 and tracking to resolution issues related to the high-level  
5 waste repository.

6 Now, I mentioned we referred to our system as  
7 the Licensing Information Management System. We are now  
8 referring to it as the Licensing Support System Pilot  
9 Project, and the reason we did this was because there was  
10 confusion as to whether DOE and NRC were developing separate  
11 systems.

12 Our Pilot Project is to identify the requirements  
13 of a system needed to support a licensing hearing, and to  
14 do some evaluation of new technology that's coming on board.

15 It has been suggested we keep the old name. I  
16 will have to give that some consideration, too.

17 The Pilot Project is part of an overall activity  
18 which we generally refer to as streamlining the licensing  
19 process. There are three breakdowns under that that we  
20 use: Tailoring licensing process to the high-level waste  
21 repository needs; building the licensing data base and  
22 resolving issues

23 There are many projects underneath those items,  
24 but those that the licensing support system and the open-  
25 item management system particularly support are the

1 negotiated rulemaking, which Chip Cameron and Ken Kalman  
2 are going to discuss; a DOE/NRC agreement, which I am going  
3 to talk about a little bit; DOE's development of a licensing  
4 support system; and, of course, building a database for  
5 the record of licensing decisions. Also the identification  
6 and resolution of issues, which John Linehan is going to  
7 talk about this afternoon.

8 Next View Graph, if you would.

9 Back in January of this year, Joe Bunting and  
10 Ralph Stein signed an agreement which says how  
11 this licensing support system is going to go. DOE agreed  
12 to develop the licensing support system and it's a major  
13 undertaking.

14 NRC will participate in the finding of the require-  
15 ments of the system. The system will be used not just by  
16 DOE but also by NRC, states, Indian tribes, and other  
17 parties.

18 The goal of that system is to make sure that we  
19 get licensing information out to the public early before  
20 the actual license application.

21 We agreed to form a coordinating committee, and  
22 I'll talk about that in a few minutes.

23 DOE supported the negotiated rulemaking concept.  
24 We agreed to make our Pilot Project which we have under-  
25 way available for DOE to work with us.

1 I'd like to go to the next viewgraph which is  
2 unfortunately slightly out of place. It is the summary of  
3 the April 22 meeting, if you'll look back a few pages.

4 The coordinating committee that we agreed to put  
5 together in the DOE/NRC agreement has had two meetings. The  
6 first meeting was February 20th, at which time we put to-  
7 gether a draft charter, and we had a meeting just last week  
8 where we approved the charter, which has one particularly  
9 important item, that we want state and Indian tribes to  
10 attend these meetings and actually participate in defining  
11 what the requirements would be for this Licensing Support  
12 System that DOE would develop.

13 There was one other major topic, and I think this  
14 would be of interest to the people here. DOE put forth an  
15 action memo which was their concept of what the licensing  
16 support system would look like. This was sent out prior to  
17 the meeting to the states and Indian tribes, and barring  
18 bad mail delivery, hopefully you might have had a chance to  
19 look at it.

20 That action memo stated that the licensing  
21 support system would consist of several things and not just  
22 the document management system.

23 They included the document management system,  
24 which is what we're also working on. It included an issue  
25 tracking system similar to what we're working with and what

1 we call the open-item management system. It included a  
2 commitment tracking system to track DOE's commitments to  
3 NRC, DOE -- I'm sorry, to the states and Indian tribes,  
4 and I'm sure also in the reverse.

5 It included one other database, and that is a  
6 database to keep the regulations that DOE would have to be  
7 in compliance with, not just the federal regulations but  
8 also the state regulations.

9 In the meeting that discussed the action memo,  
10 there were two items that I would like to highlight. One,  
11 for those who receive the document, Charlie Head  
12 here clarified that the document was written prior to the  
13 DOE/NRC agreement, and pointed out that the tone of the  
14 document is that a system that would be built for DOE. It  
15 is intended that the licensing support system will be used  
16 by NRC, the states and the Indian tribes.

17 The other item that received considerable dis-  
18 cussion was the document made an attempt to define what  
19 would and what would not go into the system.

20 We had a few objections to this because it con-  
21 sidered excluding such things as handwritten notes, comments  
22 on drafts, and some drafts. The point that we made was  
23 that there are situations where under discovery this inform-  
24 ation would be required to be delivered.

25 Accordingly, DOE has agreed to go ahead and

1 complete a procedures and specifications for document  
 2 collection, and they're going to complete this by the end  
 3 of May and it will be discussed in the next meeting of the  
 Coordinating Committee which will be in June.

There were two other areas of discussion which  
 6 will be carried on into this June meeting. This was the  
 7 development of a common key word list, and what we're after  
 8 here is to develop a common set of key words by which we  
 9 identify documents so that when all these documents do come  
 10 together into one system, if we're using the same set of  
 11 key words we will be better able to find and identify the  
 12 documents that we want and call them up.

The last item is one of particular concern. The  
 14 DOE system that is being developed will not be available  
 15 until late 1988, perhaps, and maybe 1989. During that time  
 16 there's going to be a considerable number of documents that  
 17 are going to be produced. We don't want to lose those  
 18 documents and in particular we would like to capture them  
 19 in an electronic format.

To do this, in the next meeting we would like to  
 21 come forth with a standard format for electronic capture of  
 22 text and also a standard format for capturing digital  
 23 images of the documents, a new technology that we're look-  
 24 ing at for the document management system.

25 Next viewgraph.

1           Please feel free to ask questions. It makes it  
2 easier for me.

3           What we're after in the licensing support system  
4 is that we would like optimal access to licensing informa-  
5 tion. We would like all of the information that would be  
6 pertinent to the licensing hearing to be available to those  
7 people who are interested in the high-level waste repository  
8 and have it available to them well before the license  
9 application.

10           If we can do this, this would help to identify  
11 issues. We could hopefully move towards resolution of  
12 those issues, but even if they are not resolved, to better  
13 focus the issues. It would also make the information  
14 available to the public, which we hope would reduce the time  
15 that is required for the discovery phase of the licensing  
16 process.

17           If we could do that, we could then perhaps meet  
18 the three-year licensing period that has been required by  
19 the Nuclear Waste Policy Act. This will be discussed a  
20 little bit more by Chip and Ken in the negotiated rulemaking.

21           We want the licensing support system to be the  
22 complete database for licensing decisions. It is not going  
23 to be, however, just a computer and computer software.  
24 There is a lot involved. There's also the procedures and  
25 I've already alluded to the importance of those procedures

1 in identifying what will and what will not go into the  
2 system.

3 There are participants, which has to include all  
4 the people that would be involved in the licensing hearing,  
5 the information database which must be complete, and the  
6 technology.

7 The technology that has been developed and that  
8 Avi is going to talk about in a little bit more detail,  
9 is particularly encouraging because it now allows us to  
10 use full text storage and retrieval, to capture electronic  
11 digital images, and store very large databases and to trans-  
12 mit large databases fairly easily.

13 Just quickly on the design requirements. We'll  
14 be discussing these a little more later.

15 Obviously, we want maximum recall and precision  
16 in gathering documents. With databases that could be on  
17 the order of millions of documents, on-line query is extreme-  
18 ly important, and in the meeting we had last week David  
19 Berick raised a particular point that the system will also  
20 have to be available to people who have very low income  
21 and also very little capability for working with computers.

22 So hopefully we'll be able to design that re-  
23 quirement into the system.

24 It has to be complete, containing all the docu-  
25 ments relevant to the licensing process if we're going to

1 have confidence in it, and we'll have to be using common  
2 procedures.

3 The system needs to be comprehensive. A major  
4 concern at this time is that you have NRC, DOE, DOE field  
5 offices, various states and Indian tribes all collecting  
6 separate databases of information. We need to tie all that  
7 information together and it needs to be an accurate database.

8 We probably will have to go to some means of  
9 certifying submission of documents, and we'll also have to  
10 validate the information that goes into the system.

11 If there are -- are there any questions? Yes.

12 MR. ERNSTUN: Kutret Ernstun, State of Missi-  
13 ssippi.

14 I would like to ask you if this database will  
15 have some capabilities for penalizing data at the Center.

16 MR. ALTOMARE: For penalizing data? I'm sorry.

17 MR. ERNSTUN: Analyzing data.

18 MR. ALTOMARE: Analyzing data.

19 No. Well, it depends on what sense you use the  
20 word "analyzing". The advantage of having full text  
21 storage and retrieval is that you can use numerous key words  
22 or combinations of words to search for and identify informa-  
23 tion in all documents that are in the database.

24 So you have the opportunity of pulling information  
25 up from a large database and doing the analysis yourself.

1 Unfortunately, you have to be looking at the documents.

2 MR. ERNSTUN: The question is to contact this  
3 data, this may mean the analysis of the data itself, should  
4 that go into the database?

5 MR. ALTOMARE: Okay, that's a good question.

6 The licensing support system is considered pri-  
7 marily a document storage and retrieval system. There are  
8 also databases which contain just numerical data, data  
9 that is being updated continuously and which is tapped by  
10 computer programs that do analysis.

11 Now, we would anticipate that the licensing  
12 support system would identify those other data bases and  
13 would include all documentation related to those databases,  
14 including any analysis that was done.

15 Are there any other questions? Yes. Jack?

16 MR. WITTMAN: On that same note, I was just  
17 wondering if when we go through the discussions about the  
18 capabilities of the system if there will be -- that's an  
19 interesting idea to down load data sets from the host to  
20 the remote location. And I don't want to jump ahead too  
21 much, but if the remote location has indeed all of the data  
22 there then that would be possible to do that kind of a  
23 down loading so that any analysis could be done on a data  
24 set that was out there by the states, the tribes, or who-  
25 ever was interested.

1 MR. ALTOMARE: DOE is about to come out with a  
2 statement of work for an RFP, and one of the first things  
3 that will happen is that they will bring a contractor on  
4 board to evaluate the various needs.

5 We have the concept as just mentioned as one where  
6 you have remote access to the database and where you could  
7 essentially tap into it, down load information to your  
8 terminal and then work with it. This is a distinct possi-  
9 bility and could very easily be arranged.

10 Yes, sir?

11 Would you mind using the mike?

12 MR. HUTCHINS: Yes.

13 MR. ALTOMARE: I've been asked for you to give  
14 your name and organization, please.

15 MR. HUTCHINS: I'm John Hutchins with the Council  
16 of Energy Resource Tribes.

17 Do I presume in this conversation that you would  
18 provide hardware specifications for down loading? And while  
19 you're thinking about that I'll tell you why I'm asking.  
20 We're in the process with the Umatilla and Nez Perce tribes  
21 of providing computer capability and station-to-station  
22 links of data.

23 And I get a little timorous that all of a sudden  
24 we're about to set up a system which will not be compatible  
25 and which will accept down loading data from NRC.

1 MR. ALTOMARE: Very, very good point. And that  
2 is one that is of considerable concern both now and when  
3 the negotiated rulemaking gets started, which is going to  
4 be discussed shortly.

5 We would like as much as possible, obviously, to  
6 make the licensing support system as compatible as possible  
7 with all of the systems that exist. And some capability  
8 can be built in that way.

9 I would suggest that the Coordinating Committee  
10 which has been set up to help DOE to identify these types  
11 of problems, bring forth the information that they need to  
12 help on their design. / <sup>This</sup> would be a good place to bring up  
13 the particular specifics of the system that it will have  
14 to deal with.

15 And I would suggest that if possible we work  
16 towards getting that coordinating group effective.

17 MR. JOHNSON: Carl Johnson, State of Nevada.

18 I'm a little concerned about this NRC/DOE agree-  
19 ment. Were the states tribes asked for input in the de-  
20 velopment of this particular agreement?

21 MR. ALTOMARE: Well, let's see -- Joe?

22 MR. BUNTING: Specifically, no. A place where we  
23 hope to get your input is going to be discussed in the  
24 next forum after lunch, I believe, on the negotiated rule-  
25 making. That's where we really want your agreement.

1           Now, what we do provide in the agreement was the  
2 Coordinating Committee, which is also a place for you to  
3 get your input in. The only thing that we have done with  
4 DOE is to get an agreement that says where NRC will not have  
5 to handle a massive multiple delivery, 18-wheeler pulling  
6 up in front of one of our buildings we happened to be living  
7 in at that time, and after taking possession of hard copies  
8 and have staff in the building in order to manage that  
9 number of documents, we just don't feel it's physically  
10 possible for us to have that many people to do that.

11           So the only agreement we have with DOE in doing  
12 this is to work towards a system to try to eliminate that  
13 from our own selfish purposes.

14           We also see that it would be useful to you, the  
15 states and the tribes if you would want to tap into that.  
16 Now, whether you do or not, that's your decision. What  
17 you're going to see in the negotiated rulemaking an  
18 approach for the Commission to have you participate in how  
19 you would do that.

20           So what we did not ask you at that particular  
21 time, whether or not you wanted to be included, we sort of  
22 made the envelope there for you to participate if you choose  
23 to.

24           MR. JOHNSON: I guess, Joe, I'm a little uncom-  
25 fortable that a process is being developed here which will

1 essentially ask the tribes and states to be a party to and  
2 participate in, yet they were not asked up front to be  
3 involved in the development of it. And I'm still a little  
4 uncomfortable about that.

5 We're coming in as kind of way behind the eight  
6 ball and whatever you guys do we're going to have to accept.

7 MR. BUNTING: Well, we had thought having this  
8 Coordinating Committee was the entree for you to come in  
9 and participate in the development. All we did was get an  
10 agreement by which you could come in and just do that.

11 What you have seen so far and what we've done,  
12 we've done unilaterally ourselves just to prove a concept.

13 MR. JOHNSON: Well, I hope that's the case.

14 MR. ALTOMARE: We really don't want to close any  
15 doors. And, frankly, the meetings we have in the coordinat-  
16 ing group have been very good. As is happening now there  
17 is good participation, and it is intended that states and  
18 Indian tribes and the public be very much involved in  
19 defining what the needs are of that system.

20 MS. VELE: I'm Kim Vele, attorney for the Stock-  
21 bridge-Munsee tribe, and I just have a couple of comments.

22 First off, the April 22nd meeting we didn't re-  
23 ceive any of that information regarding that meeting but a  
24 couple of days before, which gave us little time to review  
25 and provide any kind of meaningful input. So we didn't even

1 send a representative to that Coordinating Committee meeting.  
2 I'm referring to the NRM information paper, and I  
3 guess our concern is that so far there seems to be an indi-  
4 cation that the Department of Energy would determine or  
5 establish a no-access file but on the other hand require all  
6 other interested parties to dump all of their relevant docu-  
7 ments into the system. And I'm just wondering whether or  
8 not the NRC has considered whether they have the authority  
9 to compel, for instance, Indian tribes to submit to this  
10 type of computer system.

11 Whether or not we'd have input in determining what  
12 would be in the no-access file.

13 MR. ALTOMARE: You absolutely would. But let me  
14 go back to your first question, first point.

15 I'm sorry you did not hear about the Coordinating  
16 Committee meeting but let me say we are now presently plan-  
17 ning one for mid-June and these are announced on both NRC  
18 announcement system that you can call into and find what  
19 meetings are going on and I believe DOE also has the same  
20 system.

21 And I believe if you check with us later we can  
22 arrange for you to get those telephone numbers.

23 MR. BUNTING: We do apologize for that. We learn-  
24 ed only recently who the second round tribes are, and we  
25 didn't have your names and addresses. And when we did get

1     them even for this meeting we've had some problem in reach-  
2     ing contact. In some cases we have telephone numbers that  
3     are wrong, in some cases we have addresses of P.O. boxes and  
4     we cannot get anything expedited through a P.O. box.

5             If we want to Federal Express something we've got  
6     to have a street address and that's something we can talk  
7     about tomorrow, about how we do establish these mechanisms  
8     to communicate to you timely.

9             We do normally go out and for the first round,  
10    I think, visited people who wanted to talk to us and we have  
11    explained to you our role, the Commission's role, how it  
12    differs from DOE, and the kind of services we do and can  
13    provide under the law and under the resources that the  
14    Commission has given us.

15            And we'd be happy to do that with you. We can  
16    set some time aside tomorrow or you can elect to have us  
17    come and visit you at some convenient time, that's up to  
18    you.

19            But we do apologize for the fact of the late  
20    notice, and not only was it late for that one you didn't  
21    get any notice for the first one, I'm sure, because we  
22    didn't know you existed at that time or that you were being  
23    funded by DOE.

24            So we just recently got that list and we're doing  
25    the best we can now to incorporate that. I think we did

1 show you --

2 Were they on the list of TWIX? Yes.

3 We do have a list that we're trying to get TWIX's,  
4 electronic communications to each person, but again we have  
5 to have something other than a P.O. box to really make it  
6 work. So we'd be willing to work with you and try to update  
7 our list so we can get this information to you timely.

8 Now, you can answer the second question.

9 MR. ALTOMARE: Well, Chip wanted to -- Chip is  
10 going to answer that directly. He's our person working on  
11 negotiated rulemaking.

12 MR. CAMERON: I think it's important to clear up  
13 one thing. The Coordinating Committee and the agreement  
14 were looked on as necessary first steps in order for us to  
15 start proceeding with this concept.

16 But I think that what we want to do is to use the  
17 negotiated rulemaking that we'll be talking about to reach  
18 some agreement on some of the technical assumptions and  
19 protocols that are going to be important for operating this  
20 particular system, and we don't want to try to preclude  
21 anything in advance.

22 And in terms of the no-access file question, that  
23 ties right into that. All people who would put their data  
24 in the system would also have the ability to use no-access  
25 file for any of their privileged information where they

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1 would just have a surrogate listing.

2 And in terms of our authority, I think that we  
3 have authority for anybody who wants to participate in our  
4 licensing proceeding to set what the rules of discovery are  
5 going to be, including this information management system.

6 But because there are so many different types of systems  
7 out there as the gentleman from CERT alluded to, and be-  
8 cause there are so many important points to consider.

9 That's why we want to use negotiated rulemaking  
10 to bring in all of the interested parties, anybody who may  
11 be affected by this, in the front to draft the proposed  
12 rule instead of the usual method by us developing and  
13 going on and issuing it for comment.

14 MR. ALTOMARE: Is there one more question?

15 MR. FRISHMAN: I've actually got two questions  
16 that are unrelated.

17 MR. ALTOMARE: Would you mind giving your state  
18 and name?

19 MR. FRISHMAN: Steve Frishman, Texas.

20 First of all, there's an up front assumption here  
21 that the affected states and tribes are parties, and I'm  
22 not quite satisfied that that's a reasonable assumption at  
23 this point because we don't have any basis to know that  
24 that assumption is correct.

25 And hooked onto that is with or without the

1 certain knowledge of parties status, what are the conse-  
2 quences of non-compliance? What happens if we don't put our  
3 stuff in?

4 MR. ALTOMARE: Chip, I think this is a good ques-  
5 tion for you.

6 MR. FRISHMAN: Let me give you the other question,  
7 too, because it's more on a technical end of the whole  
8 system.

9 I see that the DOE is working on a standard  
10 approach for interim document collection. Interim documents,  
11 future documents, are only two of the three classes of  
12 documents. There's a whole world of documents out there  
13 right now. What's going to happen with those and what's  
14 going to be the criteria for inclusion, exclusion, proprie-  
15 tary, so on?

16 MR. ALTOMARE: Chip will take the first one; I'll  
17 take the second.

18 MR. CAMERON: Well, I guess in relation to the  
19 first question you asked, Steve, about states having party  
20 status, of course in our Rules of Practice there are  
21 criteria that the Licensing Board will use to grant standing  
22 to anybody who may be affected by the facility. At least  
23 if it's within the zone of interest covered under the  
24 Atomic Energy Act in NEPA.

25 The new procedural rule that the Commission will

1 be issuing shortly does revise the Rules of Practice to  
2 state that a host state will definitely have full-party  
3 status as well as affected Indian tribes, as defined under  
4 applicable law.

5 In terms of the second part of that question, if  
6 you don't want to put it in I guess the idea that we're  
7 focusing on is that if you want to be a party to the pro-  
8 ceeding you have to put it in.

9 MR. FRISHMAN: Maybe you'd want to expand a little  
10 bit further. Suppose you don't want to be a party, you'd  
11 rather be in the arena (?). I mean on the up-front end  
12 where we at this point just hypothetically just don't know  
13 what we want our status to be and may not until the actual  
14 proceeding begins.

15 MR. CAMERON: Well, that's a problem in terms of  
16 the objective that we have of trying to get data into the  
17 system early. But, I mean, obviously people are not only  
18 going to know whether they're going to be a party or not,  
19 but they may want to come in under less than a full-party  
20 status under 2.715C of our Regulations, and there's no way  
21 that we're trying to force people into doing that.

22 I guess we're looking at this system as being  
23 mutually beneficial to all parties or potential parties to  
24 the system, so therefore that would encourage the use of  
25 the system and participation in it.

1 But if you're not going to be a party or until you  
2 decide to be a party to the proceeding, there's no way  
3 that we can, you know, obviously force you to put your data  
4 into the system.

5 MR. ALTOMARE: In terms of your second question,  
6 unfortunately there is not a comprehensive system for inter-  
7 im collection of documents, and we are very concerned about  
8 this.

9 It is an area that we are attempting to move for-  
10 ward with and that's why we were looking for the next meet-  
11 ing of the Coordinating Committee to discuss how these  
12 documents would be collected and how we could get a system  
13 that would be more common between all parties that are in-  
14 volved or concerned.

15 So definitely that is an area that we have to  
16 address.

17 You mention there's a lot of documents that exist  
18 out there now and that is correct. This came up in the  
19 last coordinating meeting on April 22nd, and DOE made a  
20 suggestion which I should repeat here.

21 They said that they would -- their goal would be  
22 to collect in full text all documents relating to the licens-  
23 ing that were produced after the Nuclear Waste Policy Act.  
24 That would be, I guess, about January of 1983.

25 They also suggested, or they have asked, I

1 believe -- correct me if I'm wrong, Charlie -- Oakridge to  
2 begin looking for 10 years back for all documents that  
3 should be included in the system.

4 Now, we suggested that there should be more than  
5 just that included in the system, that any documents that  
6 would be used in the licensing process, regardless of how  
7 far back it goes, we would also anticipate would be included  
8 in the licensing support system.

9 We did not at that time, nor did anyone at the  
10 meeting, have any better suggestion of how far back to go.  
11 It is obviously an economic problem in terms of what docu-  
12 ments you bring forth to put in the licensing support sys-  
13 tem. But if there are any suggestions of what should be  
14 done I believe DOE would be very interested in hearing your  
15 recommendations.

16 I'd like to ask, if I may -- we don't want to cut  
17 off any questions. We will be here today and tomorrow, so  
18 please save your questions. But I think, if you don't mind,  
19 we could perhaps move ahead with Avi's presentation, which  
20 will go into more detail on the system, and then come back  
21 to a questioning period after.

22 MR. BUNTING: A lot of the questions are getting  
23 into the subject of negotiated rulemaking. I think if you  
24 hear that it'll answer a lot of the questions I'm hearing  
25 now about who makes who do what.

1 MR. BENDER: Good morning. If you do have any  
2 questions, please feel free to interrupt during the present-  
3 ation.

4 The objectives of the Pilot Project are two-fold,  
5 as Phil mentioned. One is development of an open-item  
6 management system and the other is a licensing support  
7 system.

8 The reason why we're calling this a Pilot Project  
9 is that the intent here is to demonstrate some concepts and  
10 eventually move into an interim information management  
11 system or licensing support system.

12 The open-item management system will be discussed  
13 in greater detail in the afternoon session.

14 In the summer of '84 we had meetings with DOE,  
15 states and tribal representatives. As I look at the audi-  
16 ence I see many new faces, but I recall Mr. Dave Stevens,  
17 then with the State of Washington, was in some of these  
18 meetings; Dean Tousley. And at that time we discussed  
19 general concepts for information management systems that  
20 would be needed to support a three-year license review  
21 requirements, both to resolve high-level waste issues and  
22 make the documents accessible at an early enough stage to  
23 minimize the need to rely on discovery.

24 Since that time, July of '85, we initiated a  
25 Pilot Project to then take these concepts and move into

1 an actual demonstration of what these systems should do.

2 It's very easy to talk about generalities but a  
3 picture is worth a thousand words and if you can actually  
4 create the system it's much easier to describe what we're  
5 looking to get from this support system. And I will be  
6 giving a demonstration of that during the break.

7 The other achievements of the Pilot, and it's  
8 really the interaction with the Department of Energy already  
9 alluded to by Phil, in that we have this agreement with the  
10 Department of Energy. We have a Coordinating Committee to  
11 get together on a periodic basis and fully define the  
12 nature and scope of the system needed to support three-year  
13 licensing.

14 And this is really a unique opportunity for the  
15 states and tribes and other participants to provide their  
16 input at that time.

17 Our Pilot Project at this stage has about 5,000  
18 documents of text in the system. The NRC is continuing to  
19 convert as much information as they can within our limited  
20 resources and budget into machine readable format. So that  
21 at some point in the near future when the DOE system is  
22 available we can then transfer that information to that  
23 single system, licensing support system, being developed by  
24 the Department of Energy.

25 But until such time we will continue with our

1 efforts in our move toward the interim information system.

2 Another side issue maybe not relevant to this  
3 meeting, but our demonstration has also had some significant  
4 impacts on the running of our own operations throughout  
5 the NRC in that our existing record management procedures  
6 are being reevaluated, and there is a move underway to  
7 develop a new system much more like to what we have develop-  
8 ed so far, that is a full text storage and retrieval system.

9 This is really meant as a very simple concept. If  
10 you think three years from now, maybe even earlier, there  
11 should be a single system developed by the DOE. The NRC  
12 will provide the Department of Energy with certified in-  
13 formation of our licensing database. It would reside on  
14 the DOE system and made acceptable to the public as well as  
15 to the NRC.

16 We've already gone over the fact that we would  
17 like to have the states and tribes and other participants  
18 to the process contribute their information, and that may  
19 be facilitated at some point in the near future through  
20 this negotiated rulemaking process.

21 Phil had mentioned and Mr. Frishman alluded to  
22 the fact that there are other systems in existence. That  
23 is true. For example, there's a system out of BWIP,  
24 systems that have been around for several years now, and  
25 it's a problem in a way in that they each employ different

1 types of procedures for indexing documents.

2 I'm not personally familiar with the level of  
3 quality control. I'm also not familiar whether any recall  
4 and precision audits have been done on those systems to see  
5 whether in fact you can capture the relevant documents.

6 The quickest way to tie those systems together is  
7 through some kind of development of procedures. So until  
8 such time that a physical system is available at headquart-  
9 ers, these various databases should be linked together  
10 through standardized procedures.

11 I've taken a relatively simple concept and made  
12 it look overly complicated. All that I mean to show here  
13 is that theoretically you would sit at a terminal, sign on  
14 with your user ID, and then conduct a search for a parti-  
15 cular document.

16 The search that you would be conducting would be  
17 either of the full text or the surrogate of the document.  
18 Full text enhanced means with the total document itself  
19 or the surrogate on top of the document, the surrogate  
20 being abstract key words, a short synopsis of what the  
21 document is about, plus the full text.

22 The surrogate enhanced search would be simply  
23 the abstract of the document with something of a built-in  
24 Thesaurus.

25 Now, there are advantages to using either

1 approaches. The surrogate search is really advantageous to  
2 the individual who is capturing the information and putting  
3 it into the system because it's much simpler to take a  
4 reported document, review it, and write a short abstract,  
5 and put that into the system.

6 This, for example, is an existing approach for  
7 the SALT project, but it has limitations. Studies  
8 have shown that if you simply search the surrogate of a  
9 document you're less likely to capture the relevant docu-  
10 ments you are looking for. There is less recall and pre-  
11 cision, because you are dependent on the congruity between  
12 the indexing done by the individual doing the abstracts and  
13 your ability to use the appropriate words to recall the  
14 document.

15 Now, if you're simply searching the full text  
16 you're faced with the same problem as well because if you're  
17 searching for waste package and there's no reference in the  
18 document to waste package but it's termed as a waste  
19 canister, you would have missed that document as well.

20 So if you can have the benefits of both worlds  
21 that's really the ideal approach for capturing documents  
22 and improving your recall and precision.

23 Once you have conducted the search you can then  
24 review the document on line, which I will show you at the  
25 break. After having reviewed that, you may then be

1 interested in access of the document. There are a number  
2 of choices that you have there.

3 If it's a relatively small document, you can down  
4 load that into a PC, inserting a diskette and it's through  
5 a program, getting the information on the terminal onto  
6 the diskette and then printing it locally on your printer.

7 Or if it's a very short document of one or two  
8 pages you can do what is termed a print screen command and  
9 just very quickly get a copy of that document.

10 If you're dealing with a site characterization  
11 plan, it would be ludicrous to really go through every  
12 single page and have your printer print the whole document.  
13 In that instance, what you would do is you would put a re-  
14 quest for the document on the terminal and that request  
15 conceptually could go to DOE and you would receive that  
16 within several days.

17 The other possibility is there may be a reference  
18 to a document in that if it's a large document it's readily  
19 available in the local public document rooms, so you can  
20 go and review that document there.

21 Then, of course, there are other types of informa-  
22 tion in the system which cannot be digitized, such as core  
23 samples. So the system should provide you with a reference  
24 of how you can go about and look at these core samples for  
25 whatever reason you want to do that. And then you eventually

1 sign off.

2 Whenever you sign onto the system you can review  
3 the status of the document request to see whether in fact  
4 the document is in the mail.

5 This is an enhanced version of a full text docu-  
6 ment, enhanced version meaning that the very first portion  
7 of the document is this header information which contains  
8 a quick synopsis of what the document is about. It includes  
9 such fields as the author, addressee, date, type of report  
10 that is is -- a memo or so forth -- and other pertinent  
11 information. That's a surrogate.

12 That will be the first thing that will come up on  
13 the screen. That is then followed by the full text. And  
14 you have the ability then to not only search on the header  
15 but also on the text itself.

16 Next.

17 I hope I don't begin to bore you with overly  
18 detailed schematics here, but as part of this pilot what we  
19 have to look for is how can we integrate our existing  
20 office automation procedures with a full text system. In  
21 other words, documents are being created at this time by  
22 word processors, so it's already available in an electronic  
23 format. So there should be some kind of a way to go from  
24 the word processing equipment directly to the full text  
25 system.

1 Part of the Pilot Project is looking into the  
2 various approaches we can use to get information into the  
3 system. The way we have this equipment configured, the  
4 database actually resides in Tampa, Florida. We have  
5 access to the IBM information network. The only reason  
6 this network was selected was we had a convenient contract-  
7 ual vehicle within the agency that we tapped into, and  
8 it just so happens that that provided us access to STAIRS,  
9 which is a full text storage and retrieval system.

10 So we took our existing word processing equipment  
11 and IBM PC's and we linked those together into a box called  
12 the controller. The controller simply means that it's a  
13 way of maintaining line control and allowing many pieces of  
14 equipment terminals to interface directly with the IBM  
15 information network.

16 There is also another way of getting access to  
17 this database, and as we're doing this morning, and that's  
18 through something known as 3101 emulation. It's simply  
19 a communication diskette that you put into your PC, turn  
20 the machine on, it lists a series of telephone numbers  
21 which may be conveniently located to where you are, and  
22 then you dial into the system, you provide a user ID, and  
23 you then have literal access to all the memos and corres-  
24 pondence that are now available in our docket control center.

25 This is the document capture and retrieval process.

1 We have quite a bit of incoming correspondence from states,  
2 tribes and the public, and we really have no control in  
3 the form or shape of those documents. Some of the corres-  
4 pondence is handwritten, some are written on printers,  
5 some are written on letter quality printers and so on.

6 So when you try to get such information into a  
7 full text system you are faced with the problem of how to  
8 get these multiple fonts and various types of documents  
9 through an optical character reader.

10 The typical optical character readers on the  
11 market today are really inefficient for large volumes of  
12 information. So we've found out, based on the limited time  
13 we've been doing this, that they are about 70 percent  
14 effective in getting the documents in. What this optical  
15 character reader does basically is you take a page of  
16 information, you run it through a machine that looks like  
17 a duplicating machine, it then takes the text and it digit-  
18 izes it. That text is then loaded into a diskette, and  
19 from the diskette it goes into this temporary holding file  
20 an electronic file.

21 Items that we cannot run through the optical  
22 character readers have to be rekeyed. That's a labor in-  
23 tensive process and something that really should be avoided.

24 The other ways of getting this information into  
25 this temporary electronic file, as I mentioned before, from

1 existing word processing equipment. If something is already  
2 being typed on the word processing equipment, it's available  
3 in machine readable format, no need to rekey it.

4 The other forms of getting information, and this  
5 may be an approach to use in the very near future, is to  
6 require contractors to submit their information on magnetic  
7 tape or diskettes. Machine readable format, much easier  
8 to get it into the system, no need for too much rekeying at  
9 that stage.

10 For example, we're taking the Code of Federal  
11 Regulations. We've gotten copies from the Government Print-  
12 ing Office. We're taking that tape and we're now in the  
13 process of loading that into the system.

14 An equivalent amount of time spent on typing that  
15 would be several days with quite a few people working on  
16 that.

17 So a lot of information is already available out  
18 there in magnetic format. Once this information gets into  
19 this electronic file, the next step is the header informa-  
20 tion. Somebody's got to look at the document, you can't  
21 get around that, and put this surrogate information that I  
22 mentioned in the previous slide.

23 The people who are doing it right now in the  
24 agency are those individuals who are intimately familiar  
25 with the correspondence that is coming in. These are



1 document. Because essentially almost everything is subject  
2 to discovery so you cannot make any artificial bounds. Our  
3 approach at the NRC at this point is everything gets into  
4 the system.

5 MR. DAVENPORT: Is it also possible to technically  
6 or is the hardware existent so that the determination whether  
7 to maintain it in that file can be made by one of a set of  
8 people as opposed to one determiner?

9 In other words, could you have all parties make  
10 a determination whether or not it should be maintained in  
11 the system and kicked into the permanent files?

12 MR. BENDER: Yes, it is possible. The approach  
13 we're using now is to get all the information in because  
14 we're not sure what is relevant and what is not relevant.  
15 In the near future we will have procedures in place, and  
16 those procedures have got to be based on the legal aspects  
17 of the nature and scope of the system.

18 MR. DAVENPORT: I understand that. What I'm try-  
19 ing to do is gain a little information to later discuss  
20 something with the negotiated rulemaking persons, and basic-  
21 ally my question is, is it possible, given the hardware  
22 and the system that you're thinking of, to allow multiple  
23 parties to make determinations, pre-determinations, on  
24 whether they want a document to stay in the system until a  
25 determination of relevancy is made, as opposed to parties

1 making a determination in advance that it wasn't relevant  
2 and therefore not putting it into the system?

3 Is it possible, given the hardware, to do that?  
4 In other words, putting a station in all the respective  
5 parties, states or tribes, giving them the capability to  
6 say, "Yes, we want that document to stay in for the time  
7 being."

8 MR. BENDER: Okay, I'll try once again. As far  
9 as the NRC is concerned, all the information goes in. If  
10 the state, for example, provides information at some point  
11 and says, "Well, we changed our minds, we don't really want  
12 to have that information in there," that's something that  
13 really would have to be handled by the state.

14 But the NRC would have to certify that all the  
15 documents that we provide are in there permanently.

16 MR. DAVENPORT: You're answering a policy question  
17 about what you want to do and I'm asking a hardware  
18 question.

19 MR. BUNTING: Yes, the hardware -- you could do  
20 it. That's feasible. And whether it's done or not, we  
21 think that's a matter that how you do that is something  
22 that could be worked out in the negotiated rulemaking, just  
23 how that thing would work.

24 MR. DAVENPORT: Right. Then preceding that  
25 question I want to know if it's physically possible to do.

1 MR. BUNTING: Yes, it is.

2 MR. ALTOMARE: Could I perhaps answer your  
3 question also?

4 MR. BUNTING: We can't hear you.

5 MR. ALTOMARE: Also to answer your question, be-  
6 cause this is important, the system that we're looking to  
7 eventually, however, after you get past the electronic  
8 temporary file and it's decided to go into the system, will  
9 not be able to be removed.

10 That is a permanent system we're looking to  
11 probably be using if the technology proves out as it present-  
12 ly appears to be to laser discs, we essentially digitize  
13 the document onto the disc.

14 MR. DAVENPORT: I understand.

15 MR. ALTOMARE: And that will make a permanent  
16 record at that time.

17 MR. DAVENPORT: Perhaps the more appropriate  
18 question then is whether after it's included be dedicated  
19 to a privileged sector where it may not be used as opposed  
20 to remove from the system.

21 MR. ALTOMARE: Right.

22 MR. DAVENPORT: What I'm wondering here is do we  
23 have a system here which is capable of deferring, of getting  
24 all the documents in and then deferring the questions of  
25 what is excludable rather than determining in advance that

1 they are excluded and therefore not ever allowing potential  
2 discovery of them.

3 MR. ALTOMARE: As far as computer systems are  
4 concerned, the capability could be made available to do  
5 exactly what you said. As far as the human ability to sort  
6 through what may be an impossible database, if you kept  
7 doing that, continuously piling it up, that would be some-  
8 thing that would have to be considered.

9 We are thinking in terms of millions of documents  
10 by the time we get to the licensing hearing in 1991, and  
11 obviously we want to have documents that are pertinent that  
12 when you search the database you pull up information that  
13 is meaningful. And this is going to have to be part of the  
14 consideration in what goes into the system and how much you  
15 hold in temporary files. But it can be done.

16 MR. BENDER: One of the technical problems that  
17 is facing us in developing a full text system is we have  
18 basically demonstrated the capability to develop a full  
19 text system, but when you do a search of this system there  
20 is something important that's missing, those are the images.

21 Many documents have graphs, pictures, photographs,  
22 and the like. And at this point we do not have in our  
23 system the capability to do a full text search and display  
24 on the screen both the text and the image. The best we  
25 can do so far, and it's really a vast improvement over

1 previous system, is the access to full text.

2 The other problem we have is how do we process  
3 compound documents. A document comes into the system and  
4 it has a photograph on it. Well, how can you then get the  
5 total document into the system so that you can rest assured  
6 that what you're searching is the complete text of the docu-  
7 ment without having to go to a separate file and get access  
8 to the figure or table?

9 There are various technologies that have been  
10 developed very recently that will begin to provide some  
11 solution to these problems. Those include laser discs  
12 technology.

13 Given that a storage of text and images when  
14 you're speaking of millions of documents require a vast  
15 amount of storage, really the only practical solution in  
16 the next few years will be to store that information on  
17 laser discs.

18 I don't know whether you can see this but this  
19 is -- it's kind of transparent -- this is a compact disc,  
20 CD ROM, which is now used in the music industry. This  
21 can hold 250,000 pages with images. The larger disc can  
22 hold a million pages.

23 Conceivably, we can take our existing docket  
24 control center and put all the information on one or two  
25 laser discs. What does that mean for you, though?

1           It means that these discs can be replicated and  
2 placed in local public document rooms. You would not have  
3 to call in and deal with an on-line system. You would have  
4 the current disc available of all the licensing information.

5           So this is really -- and there are systems in ex-  
6 istence right now that employ this disc technology. For  
7 example, the second phase of our Pilot Project we will be  
8 looking into the system for digital display, a unique con-  
9 cept developed by the Air and Space Museum in Washington,  
10 D.C.

11           This is a system that has been able to capture  
12 both text and images. It's a one of a kind system which  
13 some have termed as a possible potential for revolution in  
14 the record management industry.

15           We're going to be, I think, very fortunate to be  
16 able to get access to that system during our Pilot Project  
17 and demonstrate its applicability for the licensing support  
18 system.

19           As we develop this information we will be sharing  
20 that with the Department of Energy through our ongoing  
21 Coordinating Committee meetings and through discussion with  
22 DOE contractors.

23           So it appears that we're headed towards systems  
24 that will be able to capture both text and images. The  
25 main point here is to begin the process of converting

1 information into machine readable format.

2 Next.

3 So what are our future plans? As far as the  
4 NRC Pilot Project, we will complete the process of convert-  
5 ing records into a full text system. For the Pilot we've  
6 only explored two areas, Nevada documents and NNWSI docu-  
7 ments, and Congressional questions and answers, simply  
8 because of the size of the database. We wanted to get a  
9 limited database that was workable.

10 We've had quite a bit of success with that and  
11 we're now looking to convert other documents as well into  
12 the system so that in the near future when the DOE system  
13 is available we could then transfer that information to  
14 DOE so we have a single system in place.

15 As far as our interaction with the states and  
16 tribes, we will be continuing to do that through the  
17 coordinating meeting with DCE and continue to have sessions  
18 such as we have this morning and obtain your feedback and  
19 comments.

20 I guess that basically covers it. I think Phil  
21 had gone over these other points before. Are there any  
22 questions? Why don't we just take a break now and have  
23 some coffee. I will be sitting by the terminal and provide  
24 you with a demonstration for those who are interested.

25 (Whereupon, a short recess was taken.)

d/1  
1 MS. RUSSELL: Could you all start coming back to  
2 your seats, so we can get started with the next part of the  
3 agenda, please.

4 We anticipated, probably, that since a lot of the  
5 meeting was going to be a demonstration of the system, that  
6 it would in fact break down and it has. So, we are having  
7 someone in here at lunchtime to fix it, and hopefully, we  
8 we will get it up and running well after that.

9 For the next part of the agenda, we are going to  
10 be discussing negotiated rulemaking. The slides that we  
11 have are not too clear, so I would strongly urge people to  
12 go back to the table and on the far right side, my right,  
13 are copies of the material about negotiated rulemaking. It  
14 has a copy of the slides, as well as for the key points of  
15 Chip's presentation. So, it is on that back table, on the  
16 far right-hand side.

17 And one other very small administrative thing, and  
18 it is very tacky that I even have to mention this. Unfor-  
19 tunately, the federal government will not pay for people to  
20 have coffee at meetings, and we would appreciate it greatly  
21 if perhaps you all would donate a dollar to the cause. Thank  
22 you.

23 And with that, I am going to introduce Chip  
24 Cameron and Ken Kalman, and Ken is going to go first.  
25

1 MR. KEN KALMAN: If everybody is all  
2 settled down and if you will turn to the briefing charts  
3 on negotiated rulemaking, I will begin my presentation.

4 As you can see from Page One of the briefing  
5 chart, this concerns development of a rule on the submission  
6 and management of records and documents related to the licens-  
7 ing of a geologic repository for the disposal of high-level  
8 radioactive waste. However, from the regulatory perspective,  
9 negotiated rulemaking, which is the process that we intend to  
10 use to develop this rule, is new and exciting. Consequently,  
11 the process has been getting more press than the intent of  
12 the rule itself.

13 The phrase "negotiated rulemaking" has tended to  
14 become an abbreviated way of describing this particular pro-  
15 ject that we are working on, and I will be discussing the  
16 intents of what we are trying to do in this project.

17 If you will now turn to Page Two of the briefing  
18 charts, you will see that the NRC staff has sent a paper  
19 to the Commission informing them of their intent to use  
20 negotiated rulemaking to develop the proposed changes to  
21 10 CFR Part 2 for high-level waste. Part 2 provides the  
22 rules of practice for licensing proceedings, and our changes  
23 will only affect the licensing proceeding for the high-level  
24 waste repository and will have no effect whatsoever on our  
25 other licenses.

1 If you will move on to Page Three. Joe Bunting  
2 already touched on this briefly, and I don't intend to take  
3 too much more time with it. Prior to the passage of a  
4 Nuclear Waste Policy Act, the NRC estimated it would take at  
5 least 42 months for our licensing review. When the Act came  
6 out, it provided 36 months, with a 12-month exception for  
7 cause.

8 After passage of that Act, Chairman Palladino, of  
9 the NRC, testified to Congress that the 36-month schedule  
10 would be very tight, even with submission of a complete  
11 and high quality application. And more recently, the DOE  
12 Project Decision Schedule has shortened the review time down  
13 to 27 months. The basic problem we have is how we are going  
14 to cope with getting the licensing done in such a short period  
15 of time.

16 If you will turn to Page Four, you can see the  
17 solution that we have come up with is to streamline the  
18 licensing process. We focused on three major areas. The  
19 first entails the licensing process itself. What we have in  
20 mind is revising the licensing process, to establish proce-  
21 dures tailored to the high-level waste regulatory framework.  
22 This is where the negotiated rulemaking comes in.

23 The second area we looked at is the licensing  
24 data base itself, and this is pretty much what Avi was dis-  
25 cussing. The idea is to develop a data base for the high-

1 level waste licensing proceeding.

2 And the third area is closing issues. That means  
3 coming to closure on the identification and the resolution  
4 of both generic and site specific issues.

5 A lot of the issues that have been cited on this  
6 page have been discussed previously, and the remainder will  
7 be discussed by other presenters here today.

8 If you will move to the next viewgraph on Page Five.  
9 A significant contributor to the length of the licensing  
10 review is the time associated with sending, receiving, and  
11 handling information and data. This includes docketed  
12 correspondence, interrogatories, and service of documents  
13 during adjudication.

14 We see electronic data processing as a means for  
15 saving time in this area. This is why we want to change  
16 10 CFR Part 2 to provide for the use of an electronic data  
17 base for the licensing proceeding. DOE has already agreed  
18 to establish this data base, and it is now up to us to  
19 develop a rule for its use.

20 The objective of the rule requires DOE's  
21 application and all supporting records be submitted in a  
22 standardized electronic format. All parties to the proceed-  
23 ing must submit the relevant data to the system in a timely  
24 manner.

25 Mr. Frishman, I would like to point out that in

1 the information paper that we distributed we noted that  
2 the intervenors may possess substantial data, and we believe  
3 that negotiated rulemaking would encourage their participa-  
4 tion. We also assure you that all parties will be provided  
5 access at a minimal cost, and needless to say, periodic  
6 written certification will be required and there will be  
7 sanctions for withholding information.

8 If you will move on to the next briefing chart,  
9 Page Six. We believe that rather than promulgating this  
10 rule in the traditional manner, that we can develop a much-  
11 more acceptable and a better rule through negotiated rule-  
12 making. Chip Cameron will be speaking later on the  
13 intricacies of negotiated rulemaking; however, I would like  
14 to briefly note the advantages of negotiated rulemaking.

15 First of all, it brings all the interested parties  
16 together at the outset of developing the rule. There will be  
17 shared points of view, inasmuch as NRC, DOE, the states,  
18 tribes, utilities, and public interest groups will all be  
19 represented. There will be a comprehensive treatment of the  
20 issues. With all the groups together in one room, we feel  
21 there should be greater efficiency through direct interaction.

22 Since all the parties will be working together to  
23 develop the rule, we believe the comments will tend to be  
24 more constructive than confrontational. And since the  
25 affected parties will have so much input into the rules

1 development, we believe this will increase the acceptability  
2 and the enforceability of the rule.

3 We also expect a shorter comment  
4 period, because most of the affected parties have actually  
5 developed the rule. There shouldn't be too many loose ends  
6 to tie up. And through this savings in time, there will  
7 also be a savings in money. As it stands right now, we  
8 expect to have the final rule published within two years  
9 from the start of this rulemaking.

10 One of the questions you are probably asking is  
11 what if the negotiating group can't achieve consensus. We  
12 feel that even if the group can't achieve consensus on their  
13 proposed rule and the NRC has to take charge and  
14 develop the rule in the traditional manner, we don't believe  
15 that the negotiation has been wasted in any way. The issues  
16 that they have resolved will be incorporated into our rule,  
17 and we feel in turn we will still have a much more acceptable  
18 rule.

19 If you will turn to Page Seven, you will see that  
20 the only real disadvantages of negotiated rulemaking come  
21 out if there is a lack of consensus. And as I said earlier,  
22 there could be a delay in promulgating the rule, and there  
23 might be an additional need for NRC resources. Those two  
24 areas will cost in dollars and cents, but we don't really  
25 expect it to be all that significant of an increase. And we

1 still expect it to be somewhat more efficient than tradi-  
2 tional rulemaking.

3 If you will turn to the last page, I would like to  
4 point out that we have already prepared a Commission paper  
5 on our intent to use negotiated rulemaking to make the  
6 changes. And Victor Stello, who is the new executive direc-  
7 tor for operations at NRC, has directed the staff to develop  
8 the Federal Register notice. As it stands right now, we  
9 believe that the Commission will receive the draft notice  
10 of intent by September 1, 1986.

11 Now, Chip Cameron will be discussing the intrica-  
12 cies of negotiated rulemaking, and we will then be open for  
13 questions.

14 MR. CHIP CAMERON: I just want to briefly go  
15 through some of what this process of negotiated rulemaking  
16 is all about and elaborate a little bit on what Ken said  
17 about the concept itself, who the major actors are in this  
18 process, what consensus means, what are the steps in negoti-  
19 ated rulemaking, and talk a little bit about the experience  
20 of other agencies in doing this.

21 In terms of the concept, it differs from the  
22 traditional notice and comment rulemaking, in that the agency  
23 gathers the affected parties together, face to face, over a  
24 period of time to try to reach agreement on what the proposed  
25 rule should look like. And if they do reach agreement, the

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1 agency publishes the proposed rule for comment. And the  
2 process is basically the same as a normal rulemaking process  
3 after this point.

4 The basic idea is to try to get the parties to  
5 establish a dialogue with each other and the agency on the  
6 proposed rule, with the goal of negotiating an agreement  
7 within a specified time frame. And if consensus is not  
8 reached, the agency then moves forward to develop a rule on  
9 its own.

10 In terms of the major actors that are involved  
11 here, there is something called a convenor. There is a  
12 facilitator or a mediator. There are the participants on  
13 the negotiating committee, and there is the agency itself.

14 Now, the convenor is someone who, once the agency  
15 decides to explore the potential of negotiated rulemaking --  
16 a convenor may be used to develop a feasibility analysis  
17 of the negotiation, identifying what parties and interests  
18 will be affected, what issues are likely to be raised, whether  
19 the parties believe it is in their best interest to negotiate,  
20 making preliminary contacts with the parties and developing  
21 a draft set of ground rules to use during the negotiations  
22 themselves.

23 Now, the role of a convenor should be distinguished  
24 from the role of what is called a facilitator or a mediator;  
25 although, one person, either from outside the agency or from

1 inside the agency, can actually function to serve both roles.  
2 And in the negotiated rulemakings that other agencies have  
3 conducted, there has been some variations on how this has  
4 been done.

5 I think in the FAA process they used one person  
6 to be the convenor and the mediator for the rulemaking. But  
7 the function of the mediator/facilitator, as opposed to the  
8 convenor, is to assist in working out the agreement, to keep  
9 the discussion going, to be the custodian for the process, so  
10 that the people on the negotiating committee can worry about  
11 the substance of the negotiation. So, essentially, the  
12 mediator/facilitator is the person who is supposed to keep  
13 the process running and keep the parties to the negotiation  
14 moving towards closure, moving towards agreement.

15 Now, most negotiated rulemakings today have used  
16 facilitators from outside the agency, rather than inside  
17 the agency. The one exception has been the EPA negotiated  
18 rulemaking on exemptions from the pesticide regulations.  
19 The EPA used a facilitator from the EPA office of general  
20 counsel.

21 The key is not whether the person is from inside  
22 or outside the agency but rather how much mediation experi-  
23 ence that person has, how well they get along with people,  
24 do they have an instinctive awareness of group functioning,  
25 so that they know how to move the process towards closure,

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1 towards agreement.

2 One of the most important things is that the  
3 facilitator be independent and neutral in terms of the  
4 subject matter of the rulemaking.

5 In terms of the participants on the negotiating  
6 committee, the agency has to determine, often with the help  
7 of the convenor, what interests may be affected by the rule-  
8 making and then determine what parties should represent  
9 those interests. In this particular rulemaking, potential  
10 interests, as Ken mentioned, would include Indian tribes,  
11 state governments, public interest groups, either environ-  
12 mental public interest groups or interest groups that are  
13 pro energy development, national public interest groups,  
14 local groups around the particular site, utilities, the  
15 federal agencies, a number of interest.

16 Of course, potential parties could include the  
17 individual states and tribes, individual public interest  
18 groups, or in some cases, an interest could be represented  
19 by a party such as, say, as National Resources Defense Council,  
20 might represent all national environmental groups. Often-  
21 times you have to try to combine, to have one party repre-  
22 sent a number of organizations.

23 In terms of the states and tribes, obviously,  
24 you could have first round affected states and tribes,  
25 second round states and tribes, states and tribes that are

1 affected by transportation of the nuclear waste.

2 In terms of numbers, most of the negotiations to  
3 date have involved anywhere between 18 and 25 people directly  
4 represented on a negotiating committee. Each party has a  
5 working group, a team, that assists the party in the nego-  
6 tiation, and it has been very helpful in the negotiations to  
7 date for the negotiating committee to use the mechanism of  
8 sub-groups to work on various issues, then report to the  
9 full committee for the full committee to address that  
10 particular issue.

11 Only one person should speak for a party. In other  
12 words, if the NRC was represented as a party to the negotia-  
13 tion, which we plan to be, there would be one NRC representa-  
14 tive, backed up by a negotiating team. And non-members of  
15 the negotiating committee can come in and present information  
16 to the committee. This is a technique that has been used in  
17 past negotiations.

18 So, the NRC is at the point now where we want to  
19 make preliminary contact with the potential parties, to see  
20 who is interested in negotiations. And I think that this  
21 meeting is an important step in that process.

22 The second step in the process is that we will be  
23 going out with a Federal Register notice of intent to  
24 negotiate. As Ken mentioned, this is due to the Commission  
25 in September of 1986. But the Federal Register notice would

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1 identify parties who we have made preliminary contact with  
2 and their interest to negotiate. But it would also request  
3 that anybody else who wants to be on the negotiating committee  
4 put a request forward, and we would have criteria for adding  
5 people to -- or, organizations to the negotiating committee.  
6 For example, would the particular party be affected by the  
7 rulemaking; are they adequately represented by someone  
8 already on the committee?

9 In terms of the agency, it has been useful in  
10 negotiations for the agency to be a party to the negotiation.  
11 In other words, the NRC would sit as a party, just as anybody  
12 else on the negotiating committee, because the willingness  
13 of the negotiating group to negotiate depends on how much it  
14 thinks it can influence the agency. And agency participation  
15 fosters this, and it also increases the likelihood that the  
16 agency will support and understand the basis for the negoti-  
17 ation.

18 The agency usually indicates at the outset of the  
19 negotiation, in the Federal Register notice of intent that I  
20 mentioned, under what circumstances it will accept a consen-  
21 sus that the group reaches. And criteria used by other agen-  
22 cies is does it violate the statutory authority of the  
23 agency, and is there a sufficient rationale developed for  
24 the rule. I think the quote from the EPA notice of intent is  
25 that the EPA would accept any consensus that resulted from

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1 the group, unless it was inconsistent with their statutory  
2 authority or otherwise unjustified.

3 In addition to participating as a party, the agency  
4 will also provide administrative and technical support for  
5 the negotiating committee, in terms of arranging meeting  
6 rooms, providing a drafting service for agreements that the  
7 committee may reach or may wish to review, legal and techni-  
8 cal staff to provide information to the committee.

9 And one issue that I was asked at the break is  
10 what about payment for travel expenses for the people  
11 involved in the negotiating committee. First of all, the  
12 committee is a federal advisory committee, under the Federal  
13 Advisory Committee Act, and the Commission will have to  
14 develop a federal advisory committee charter for the group,  
15 which means that all of the meetings of the negotiating  
16 group are going to be public meetings. They will be noticed  
17 in the Federal Register. Minutes will be kept. But FACA  
18 limits the payment of people on the negotiating committee to  
19 per diem expenses, first of all.

20 Second of all, the NRC views participation by  
21 states and tribes on a negotiating committee as a use of the  
22 116 or 118 funds, and although that is obviously DOE's  
23 decision, we anticipate that we will be supported on that.

24 One of the other issues that we are trying to  
25 work out is what arrangements we should make for the parties

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1 who do not have a source of funds to attend the negotiating  
2 committee sessions, and that is still something that has to  
3 be resolved. One approach has been to establish some type  
4 of a resource pool, where it would be administered by a  
5 neutral party, for example, the National Institute for Dis-  
6 pute Resolution or the American Arbitration Association, who  
7 would pay for expenses where warranted for people who have  
8 to attend the sessions. But that is one issue that we are  
9 still working out.

10 In terms of consensus, the negotiating group sets  
11 the ground rules for what will constitute consensus at the  
12 beginning of the negotiation. And there are a number of  
13 choices here: Do you require agreement on a total package?  
14 In other words, on every issue. Or can you be a little bit  
15 more flexible and say that, well, we can reach agreement --  
16 we will reach agreement on some issues and on others we  
17 can't. Do you have a formal signed agreement that is sub-  
18 mitted to the agency?

19 Or do you do it more informally?  
20 It doesn't have to be a formal submission.

21 And the other aspect: Does each party on the  
22 negotiating committee have a veto or is it by majority vote?  
23 Most of the negotiations -- I think all of them -- have run  
24 on the fact that each party would have a veto, rather than a  
25 majority vote. And in terms of how you define consensus, in

d/15 1 those circumstances, it doesn't have to be, "Well, we really  
2 support this." It can be, "We can live with it," or, "We  
3 won't object to it," in terms of reaching consensus. But  
4 that will be an issue for the negotiating committee to  
5 resolve when it is formed.

6 In terms of the process, we are working on various  
7 aspects of the negotiation now, and we are making preliminary  
8 contact with potential parties. We are thinking about who  
9 might be a good convenor and facilitator for this particular  
10 rulemaking. But the first formal step is going to be the  
11 issuance, in the Federal Register, of the notice of intent.  
12 And that notice will discuss the nature of the problem, why  
13 we want to do this particular rulemaking, why we think nego-  
14 tiation is feasible in this situation, who the convenor is  
15 going to be, who the facilitator/mediator will be, the  
16 identification of participants, including a call for other  
17 parties who want to participate what the agency role will be,  
18 a tentative schedule for the rulemaking, the administrative  
19 support that will be provided by the agency, and the listing  
20 of the substantive issues that we want a negotiating committee  
21 to address.

22 This will be issued for public comment, and at the  
23 same time that we do this, we will send a draft Federal  
24 Advisory Committee Act Charter over to GSA for review. After  
25 the comments come back in, we will set the schedule for the

1 negotiations. The first meeting of the negotiating commit-  
2 tee will be to have the parties become familiar with each  
3 other, to try to set the logistics of the negotiation, in  
4 terms of meeting times and places, how you deal with issues  
5 such as contact with NRC decision-makers.

6 In the OSHA negotiations on trying to establish a benzene  
7 standard, the parties to the negotiation were always making  
8 end-runs around the committee, to the administrator of OSHA.  
9 In the FAA experience, any attempt to deal with the adminis-  
10 trator of FAA to see if the FAA administrator could influence  
11 the negotiations was rebuffed by the agency.

12 The first sessions of the negotiating group will  
13 be an educational process, where the group will try to deter-  
14 mine what information they need to make their decision. We  
15 are anticipating the use of a contractor to provide informa-  
16 tion on the technical aspects of this particular rulemaking.  
17 After the committee goes through a certain number of education-  
18 al sessions, then negotiations will begin.

19 There will be a date where, if consensus has not  
20 been reached, the agency will terminate the negotiations and  
21 proceed on its own. If consensus is reached, a draft pro-  
22 posed rule will be submitted to the Commission for approval.  
23 It will be published in the Federal Register for comment.  
24 If it is appropriate, the negotiating committee will review  
25 the comments informally, at least, without convening again,

1 and a draft final rule will be submitted to the Commission  
2 for approval and a final rule will be promulgated.

3 In terms of other agencies, there have been four  
4 completed negotiated rulemakings to date. OSHA attempted  
5 one on the standard for occupational exposure to benzene.  
6 The FAA completed a negotiated rulemaking on flight and duty  
7 times regulations for pilots. And the EPA has done two. One  
8 was on non-compliance penalties for vehicle emissions, and  
9 the other one was on emergency exemptions from pesticide  
10 regulations.

11 In terms of the OSHA attempt, the negotiating  
12 committee reached an agreement in principle on a standard,  
13 but it was never formally submitted to the agency. And it is  
14 generally looked on as a failure, and no rule has been promul-  
15 gated by OSHA on that particular subject since the committee  
16 met. So, it is unclear what benefits were achieved by the  
17 group.

18 In the other three negotiations, there has been at  
19 least partial agreement. All of them resulted in a proposed  
20 rule based on the negotiations. And the emergency exemptions  
21 from pesticide registration was a full success. And I think  
22 it is important to remember here, though, that even if there  
23 isn't total consensus or even if consensus is not reached,  
24 the process is still valuable.

25 As Ken noted, areas of concern can be identified,

1 differences between the parties can be narrowed. Alternatives  
2 can be explored, and the agency and other parties to the  
3 negotiating committee can get some valuable information.

4 In terms of the convenor, OSHA used a convenor and  
5 a separate mediator. FAA used one person, who was provided  
6 by the Federal Mediation and Conciliation Service, to the FAA.  
7 And EPA, as I noted, did use an inside facilitator, someone  
8 from inside the agency.

9 In terms of the parties, surprisingly enough, the  
10 agencies have experienced no difficulty in dealing with the  
11 representation issue. You often get diverse viewpoints from  
12 the same interests. For example, in the OSHA negotiated  
13 rulemaking, the petroleum and chemical industry could tolerate  
14 a one part per million standard, which is what labor repre-  
15 sented it wanted, much easier than the steel industry could.  
16 So, there was a split there. The rubber industry was only  
17 concerned with skin contact from benzine; so, their interests  
18 were a little bit different.

19 The most important point that came out of the OSHA  
20 negotiation is that the agencies should participate as a  
21 party. OSHA did not participate, and this was a key factor  
22 in not achieving success in that particular negotiation. In  
23 fact, OSHA sort of undermined the process by issuing a draft  
24 rule, not a proposed rule but a draft rule, right in the  
25 middle of the negotiations.

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In terms of numbers, EPA has successfully conducted negotiations with as many as 23 parties. And in terms of time frame, the OSHA negotiation took a little over a year. Most of them take about a year, from the notice of intent to negotiate, to when a proposed rule is issued. And the public comments on the EPA proposed rule that was developed by consensus were mostly from the participants in the negotiation itself and were mostly supportive.

There was one other question at the break about the relationship between the coordinating committee that is operating now between DOE and NRC, that Phil Altomare talked about, and the negotiating committee. The coordinating committee is looking mainly at design of the system. The negotiating committee is going to look at use of the system and the licensing process. There are areas of overlap, mainly on setting the protocols for format and the protocols for what information is going to go into the system.

In this respect the coordinating committee is developing information on those areas that will be used along with any other information that the negotiating committee needs to reach a consensus on this particular issue. So that, the coordinating committee is not for closing those protocol issues. That is going to be left to the negotiating committee.

1 Are there any questions for either Ken or myself  
2 on this process?

3 MR. DAVENPORT: (Question not audible.)

4 MS. RUSSELL: Please use the microphone and identi-  
5 fy yourself for the record.

6 MR. CAMERON: The question was from Jim Davenport  
7 on Steve Frishman's question on what happens if Texas does  
8 not participate in the negotiation and later becomes a party  
9 to the licensing hearing. How will they be bound by this  
10 particular rulemaking?

11 If someone does not participate -- if there are a  
12 lot of parties, concerned parties, that don't participate in  
13 the negotiated rulemaking, then it is not going to work,  
14 obviously. But if there is a single party that does not  
15 participate -- for example, if Texas did participate, I think  
16 that we would want to try to move forward with negotiations,  
17 and this rule would be published, as any proposed rule would,  
18 for notice and comment. And I don't think that the rule  
19 would be defective on legal grounds because Texas did not  
20 participate, because they would have an opportunity to  
21 comment on the rule and, therefore, would be bound by the  
22 rule.

23 MR. FRISHMAN: Steve Frishman, Texas. I agree with  
24 your answer, Chip.

25 MR. CAMERON: So, you are going to participate?

1 MR. FRISHMAN: No, I didn't say that. I said I  
2 agreed with your answer.

3 MR. CAMERON: All right.

4 MR. FRISHMAN: That the remedies are all there on  
5 your part.

6 A couple questions. One is, it seems to me that  
7 you are making some out front decisions and assumptions  
8 already. One is, I would like if you could go back and sort  
9 of restate your case for the NRC being a negotiating party.  
10 Your strongest case was that the OSHA attempt indicated that  
11 it is important for the agency to be a party. But in the  
12 explanation that you gave for that, you provided that --  
13 or, you said that that is primarily because OSHA acted in  
14 bad faith.

15 I don't presume that NRC would do that. I  
16 would like to see -- I know that it is not mandatory that  
17 you be a party. I would like to hear a little bit better  
18 rationale for your having made this up front decision before  
19 the whole issue is sort of before the public to discuss who  
20 the legitimate parties may be. That is one question to  
21 look at.

22 Another one is I didn't hear you make the distinc-  
23 tion between facilitator and mediator and whether you have  
24 any preconceived, sort of, demands on the system in that  
25 area, as well. Those are just two to start with.

1 MR. CAMERON: Okay. In relation to your first  
2 question; I don't want to characterize OSHA's draft rule as  
3 being -- acting in bad faith. I am not exactly sure that  
4 those were the circumstances that were involved. It just  
5 didn't help the process, and it wasn't -- regardless of  
6 whether they would have issued this draft rule for discus-  
7 sion, the fact that they were not a party had other problems  
8 connected with it other than that.

9 And I stated that the NRC will be a party; at  
10 least the staff is anticipating that we will be a party.  
11 But of course, the Commission is going to have to approve the  
12 Federal Register notice of intent with that particular decis-  
13 ion in it.

14 But in terms of rationale, I guess that if the  
15 agency isn't a party to the negotiations, that there have been  
16 problems with the agency really understanding what the group  
17 discussions involved and being able to use that information  
18 to draft a proposed rule. If the agency isn't a party, then  
19 that sort of affects what the criteria might be for the agency  
20 to accept the consensus that was developed. And I am not  
21 sure how that would sort out in terms of what guarantees  
22 the Commission would make to use the consensus. I don't  
23 know.

24 I guess that it just makes sense to me that the  
25 agency and DOE should be parties to the negotiation in order

23 1 to espouse their particular point of view on -- not DOE --  
2 but at least in terms of NRC, on what is within our statutory  
3 authority, what sort of policy constraints we might have.  
4 I guess I would be interested in hearing what problems that  
5 you would see with the NRC being a party to the negotiation.

6           And before you address that, just to deal with  
7 your second question, the distinction between facilitator  
8 and mediator has often been on what types of issues you are  
9 trying to resolve. If there are strongly held opposing views  
10 among the parties and you are in a negotiating situation --  
11 because that is one criterion on which to decide whether to  
12 negotiate -- but if you do have these strongly held views,  
13 you would want to use someone with mediation skills to try  
14 to resolve that opposition.

15           Whereas, if the views are not that much in  
16 opposition, you can use a -- use the term "facilitator" as  
17 someone who is going to keep the process going, and there  
18 isn't this mediation flavor to it. And that is perhaps a  
19 subtle distinction that is more important in theory than in  
20 practice, but at least that is the way I see the difference.

21           MR. DAVID STEVENS: Before Steve gets back on the  
22 other part, I would like -- you have triggered something  
23 in terms of the difference between facilitation and media-  
24 tion. Are you going to try to make a determination at the  
25 outset as to the kind of individual you will want? Have you

1 thought about whether this lends itself for facilitation or  
2 are there some issues within that that would require media-  
3 tion? Because that is a decision that is pretty basic to the  
4 type of discussions that will be held.

5 Have you been thinking, perhaps, that you will  
6 attempt to facilitate this effort if it moves forward? But  
7 would there be a possibility of bringing in a separate  
8 mediator for one or two issues, or have a sub-set of negotia-  
9 tions to work on particular points, and then go back to your  
10 facilitation on the general negotiation?

11 MR. CAMERON: Well, that is a good suggestion. I  
12 guess that the way we are looking at things now is that the  
13 issues can be resolved through facilitation and that we  
14 wouldn't need mediation involved in it. When we have some  
15 more discussions with potentially affected parties and  
16 people like yourself, maybe we will see that differently  
17 and as we refine the issues a little bit more.

18 But the way I have been looking at it is that  
19 facilitation would be appropriate in this situation.

20 MS. JUDY KANY: Judy Kany, State of Maine.

21 You aren't intending to negotiate on matters of  
22 health and safety,  
23 public / I would certainly hope. I hope this is just subsid-  
24 iary matters and that that would be absolutely clear that  
25 that would be the case.

MR. CAMERON: Yes. This particular rulemaking is

1 going to deal with procedural issues purely, and it is not  
2 going to have any direct public health and safety signifi-  
3 cance. Although other agencies have dealt with public health  
4 and safety issues in their negotiation, so it is not impossi-  
5 ble to do it in that type of situation. You have to keep in  
6 mind that agencies promulgate rules on public health and  
7 safety all the time, and this is essentially the same thing  
8 but having the people who might be affected by that particu-  
9 lar rulemaking participate up front in the process.

10 MR. FRISHMAN: I was not raising the issue of  
11 whether you were a party or not to air problems. I can see  
12 a couple of problems that I will discuss. But I was primarily  
13 trying to forewarn that in your notice of intent that partic-  
14 ular area should be well rationalized, because it is very  
15 much an open question.

16 MR. CAMERON: Okay.

17 MR. FRISHMAN: And one of the things I see in it,  
18 as usual, in the extended thinking, and I know it is an  
19 issue that has been brought up in some of the information you  
20 have been looking at, and that is the role of OMB throughout  
21 the rulemaking process, and how that may impact on your  
22 decisions on whether to be a party or not, may impact on  
23 DOE's positions on negotiating, because we at least allege  
24 we have some evidence of that having happened in other rule-  
25 making.

1 I think that contributes to your decision on how  
2 you want to play this.

3 MR. CAMERON: Okay. In terms of OMB, we are in a  
4 little bit different posture than the other agencies. OMB  
5 gets involved in this process in two ways: One under Execu-  
6 tive Order 12291, Federal Regulation. And they used to  
7 get involved with it because they were the keeper of agency  
8 requests to form advisory committees. GSA has that responsi-  
9 bility now. But the Commission has always taken a position,  
10 like other independent agencies, that we are not subject to  
11 the executive order, and that has been accepted by the admin-  
12 istration.

13  
14  
15 We are not subject to 12291, although  
16 we do perform a regulatory analysis that is similar to the  
17 analysis that is set out in 12291. So, I don't think that  
18 we are going to run into OMB problems on the particular  
19 rulemaking.

20 In terms of DOE, on the Federal Advisory Committee  
21 Act issue, since they are not the one -- they are just going  
22 to be a member of the advisory committee, so they are not  
23 going to have to deal with that. And it is not their rule-  
24 making, so that they won't have any problems under Executive  
25 Order 12291.

1 Now, I can't speak to how the OMB budget process,  
2 as opposed to 12291 and FACA, will affect either NRC or DOE.

3 MR. DEAN TOUSLEY: Dean Tousley, Yakima Nation.

4 Have you come to any resolution as to whether you  
5 intend to permit each affected tribe and state that wishes  
6 to to participate individually in the negotiated rulemaking?  
7 Or can we look forward to being told to find one or two  
8 representatives to represent particular constituencies?

9 MR. CAMERON: That is still an open issue, and it  
10 depends on both the interest and ideas that the individual  
11 states and tribes have on that issue. I think we would  
12 rather err on the side of over including people, than under  
13 including people. And certainly, I don't think that we want  
14 to have parties whose interests are really different be  
15 represented by someone that has a different interest. I mean,  
16 there are any number of ways to cut it, and we would apprec-  
17 iate any suggestions that you or other people have on those  
18 issues.

19 For example -- I mean, it is basically -- we are  
20 focusing on the first repository now, but the second reposi-  
21 tory states and tribes obviously should participate in the  
22 negotiating committee. But can you get one state to represent  
23 other states? Can the CERT organization or NCAI  
24 speak for the various Indian tribes? There are a lot of  
25 problems along those lines, and we want to try to work it out

1 in the most rational way possible.

2 But I guess at this point we realize that there are  
3 a number of different combinations. I mean, maybe transpor-  
4 tation states could possibly be represented by one state.  
5 But in terms of individual sites, I don't think that we want  
6 to combine -- we don't want to have Nevada representing  
7 Washington and Texas.

8 MR. TOUSLEY: So, have you got any preliminary  
9 ideas about who you might like to have as facilitator and  
10 mediator?

11 MR. CAMERON: Well, there has been a number of  
12 suggestions, and I would rather not get into specific names  
13 of people at this point. But basically, our discussion has  
14 focused on whether there is someone inside the agency who  
15 might be good at facilitation and also independent from the  
16 rulemaking area or whether we want to go outside to either  
17 Federal Mediation and Conciliation Service, who will provide  
18 a facilitator or a mediator to us at no cost, from what I  
19 understand, or whether we want to go out to a private con-  
20 tractor, either someone who has been involved in waste  
21 management issues or someone who has been involved with the  
22 NRC.

23 And I guess that our main concern is to get someone  
24 who is good and will be perceived as impartial. And if we  
25 have to do that through a contract, we will do that through

1 a contract. If we can do it through the Federal Mediation  
2 and Conciliation Service, we will do it that way. If we can  
3 do it inside the agency, we will do that. And that is some-  
4 thing that we really have to resolve fairly soon, that we  
5 can have this particular person start working with the affect-  
6 ed parties.

7 MR. TOUSLEY: (Question not audible.)

8 MR. CAMERON: The question was would the choice  
9 of the facilitator be decided before the notice of intent,  
10 and I would say, yes, so that we can get the facilitator for  
11 this rulemaking, drafting some ground rules for how the  
12 negotiation is going to work and making some contacts with  
13 the potentially affected parties and getting ideas about  
14 how interests may be grouped, the type of issues that you  
15 brought up earlier.

16 MR. STEVENS: David Stevens again.

17 I am kind of interested -- since this is a depar-  
18 ture in the normal process of rulemaking -- first for NRC,  
19 how the question of precedent would be viewed. I am not  
20 sure whether you want to fully explain all the internal  
21 ways in which you have come to this point or what your  
22 expectations are. But do you consider to have a fairly strong  
23 mandate to move ahead, and if so, would that mandate be con-  
24 sistant throughout the process? Or would there be some voice  
25 from, perhaps, as an example, the general counsel's office,

1 that says that, "We may be getting into an area here whi  
2 may be difficult for us in some other areas of the agency's  
3 activities in the future"? Is this something we can look  
4 forward to -- if a start is made and assuming there are some  
5 of the advantages that you determine and enough parties  
6 determine that that is appropriate--letting the process  
7 unfold without some nagging suspicion that at some point in  
8 the process there will be some withdrawal symptoms from NRC?

9 MR. CAMERON: Well, I can say a couple of things  
10 on that. One is that the Executive Director for Operations  
11 is very supportive of using this process in this particular  
12 situation and has informed the Commission that we are going  
13 to do that. And as far as I can tell, and maybe Joe Bunting  
14 can give a little better reading on this, the Commission is  
15 also supportive of using it. I mean, the other point is that  
16 we are dealing with a Commission that changes, and regard-  
17 less of whether you are talking about negotiated rulemaking  
18 or any other issue, you are never completely guaranteed that  
19 you are going to get completely consistent results.

20 But we do feel that we have enough support so that  
21 we can move forward on this without being afraid of someone  
22 pulling the rug out from under us. And as I said, the EDC,  
23 the Executive Director for Operations, <sup>is</sup> very supportive of the  
24 idea. And I know -- Joe, do you want to say anything  
25 about the Commission's -- (Pause.)

2/31 1 MR. BUNTING: Well, we have had those kinds of  
2 concerns ourselves, and far be it for me to say here that  
3 it is a foregone conclusion that the Commission will endorse  
4 it. The EDO did feel so strongly about it that he directed  
5 us to move forward in this direction, prepare the Federal  
6 Register notice and present it to the Commission for decis-  
7 ion in September.

8 I can say that he briefed the Commission on the con-  
9 cept on the same day, at the meeting of the National Associ-  
10 ation of Utility Rate Commissioners. I think the commission-  
11 ers found it very interesting and they look forward to seeing  
12 it, as a way in which they could achieve efficiencies in the  
13 licensing process.

14 I have spoken to each of the commissioners' assis-  
15 tants about it, and they warmly received it. Now, on the  
16 other hand, let me say that I am not sure that any of those  
17 people have heard any words from the Office of General Coun-  
18 sel about it and whether or not they would get some advice  
19 along the lines that you suggested. That avenue is still a  
20 distinct possibility. I don't think it is very probable, but  
21 it is a distinct possibility.

22 So, the staff has been directed to move forward.  
23 The paper is at the Commission to inform them of that, that  
24 we are moving forward. And I don't think that our executive  
25 director for operation would have made that decision to do

1 that without feeling pretty confident that he has a fair  
2 amount of support, because it does involve quite a bit of  
3 expense, in terms of money and staff resources, to move for-  
4 ward with this next phase. So, that is the limit of what I  
5 can tell you of how confident we are.

6 MR. CAMERON: And some of these things are going to  
7 be worked out by -- when the notice of intent is issued, at  
8 least we will have a reading from the Commission on what they  
9 want to do along those lines.

10 Any other questions?

11 MR. BUNTING: Let me say that I would suppose the  
12 Commission would still be influenced by any comments they  
13 may hear from states and tribes as a result of us sharing  
14 this with you now. And certainly that is one of the purposes  
15 in doing that. So, if you have strong views one way or the  
16 other, perhaps you should let those be known.

17 MR. FRISHMAN: A couple more. The first one: You  
18 say in your notice you are going to try to identify, at  
19 least tentatively, some of the issues.

20 MR. CAMERON: Yes.

21 MR. FRISHMAN: How do those issues ever get formal-  
22 ized or to some point of limitation? Is there -- at the open-  
23 ing, is there going to be an effort made to limit the issues,  
24 or is there going to be flexibility allowed to the negotia-  
25 tors to add issues? And that could run up against unantici-

2/33 1 pated issues, and resolving them could run up against your  
2 milestone or your "drop dead" date. That is one question.

3 Why don't we go through that one, and then I will  
4 have just one other.

5 MR. CAMERON: Well, I think that there would be  
6 flexibility for the negotiating committee to decide what  
7 issues should be added or what issues may be irrelevant. I  
8 think that our concern would be that we don't throw in some  
9 issues that, although are important to people on the commit-  
10 tee, may not be appropriate for this particular rulemaking.

11 But the basic answer is that I think that that is  
12 something that the negotiating committee will work out at  
13 the beginning, as exactly -- has the agency framed the issues  
14 correctly and what other issues should be added. And keep in  
15 mind that this notice will be -- will solicit public comment  
16 on all the issues, the one that you flagged earlier and on  
17 whether the issues that the agency has in the notice are the  
18 appropriate issues, and should there be other issues added.

19 But even then, there will still be flexibility for  
20 the negotiating committee.

21 MR. FRISHMAN: Okay. That is about as clear as it  
22 is going to get for now, I guess.

23 The other is if you go through this process and you  
24 end up with a failure for consensus, what is the status of  
25 the record of the negotiation? Does that become a piece of a

1 record of rulemaking or does it just go away?

2 MR. CAMERON: It doesn't go away. It will become  
3 relevant to the rulemaking record that is developed by the  
4 agency. If we do have to go it alone on either parts of it  
5 or on the total package, we still have to come up with a  
6 rationale for the rulemaking under the Administrative Pro-  
7 cedure Act and any other statutory responsibilities that we  
8 have. And we are going to have to address what the negotiat-  
9 ing committee did. I don't see any way around not address-  
10 ing that part of it.

11 So, in terms of what a review in court would do,  
12 I mean, that is going to depend on how well the rationale  
13 -- how good the rationale is that the agency developed and  
14 what sort of scrutiny they give the particular rule. But I  
15 think that we are going to have to deal with that.

16 MS. KANY: Judy Kany, State of Maine.

17 I just wanted to share a comment with you, to ask  
18 you to share with your commissioners. And that is that just  
19 the idea of negotiated rulemaking by the Nuclear Regulatory  
20 Commission scares the hell out of me, and I know I can speak  
21 for almost every single citizen in the State of Maine. We  
22 do not feel adequately protected by your current rule on  
23 licensing high-level radioactive waste repositories. We do  
24 not feel adequately protected by the EPA's standards, and  
25 we certainly do not feel adequately protected by the DOE

1 guidelines, if they were indeed implementing all that are  
2 within their rule.

3 And therefore, I would like to pass that -- have  
4 that message passed on, that your agency, of all agencies in  
5 the federal government, and your particular area, the high-  
6 level radioactive waste disposal portion particularly seems  
7 inappropriate, even though you are just perhaps beginning  
8 with just procedural matters. It does seem inappropriate to  
9 me, and I know I can speak for both branches of government,  
10 as well as for the citizens of the entire State of Maine.

11 MR. CAMERON: Well, why does it seem inappropriate?

12 MS. KANY: Your role, your statutory responsibility  
13 is one of really protecting the public. And to regulate, not  
14 in the economic -- not over the economics -- because the econ-  
15 omics, other than to assure a protection that safety matters  
16 in the long run are protected, and that is the only time  
17 ordinarily that I see you having a role in looking at financial  
18 responsibility.

19 For instance, could a particular utility -- could  
20 it generally afford long-run safety procedures. That is when  
21 you generally have evaluated financial responsibility. And  
22 that is the only area in which economics ordinarily comes in  
23 to your regulatory responsibility. FERC is really the  
24 regulatory agency generally having to do with nuclear power  
25 or anything that touches upon it.

2/36 1 Now, certainly, as far as repositories, you would  
2 want to make certain that there is adequate funding for  
3 safety over long-term development. So, I just -- your role  
4 is one of assuring the safety of the public, and that is why  
5 you were separated as an agency from the old Atomic Energy  
6 Commission, why the two were separated out, the Department of  
7 Energy and the Nuclear Regulatory Commission. Your role is  
8 one of assuring safety for citizens of the United States and  
9 of the world.

10 And somehow negotiating among interested parties,  
11 even in procedural matters, does not seem to be consistent  
12 with your statutory role and responsibility.

13 MR. CAMERON: Well, I would just point out to you --

14 MS. KANY: And I really am very concerned about it.

15 MR. CAMERON: -- that the regular rulemaking process,  
16 where you don't go through negotiation, under our traditions  
17 of government and under the Administrative Procedure Act, any  
18 rule that we promulgate or that we propose has to be subjected  
19 to public review and comment. And that is the same thing  
20 that is going to happen on this rule. It doesn't have any-  
21 thing to do with financial responsibility.

22 One of the basic ideas here is that we can be  
23 assured of having a comprehensive data base for licensing,  
24 so that an adequate licensing decision, one way or the other,  
25 can be made. And that is why I think it is in the interest

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1 of public health and safety and in the interest of any state  
2 or tribe where a proposed site may be to be interested in  
3 this type of rulemaking. We don't want to try to get into  
4 an adversarial mode on this one.

5 But thanks for the comment.

6 MS. KANY: Right. Yes. I do see you as being  
7 the regulator and that you should be in an adversarial mode  
8 on this particularly.

9 MR. CAMERON: Any other comments?

10 (No response.)

11 MR. CAMERON: Well, I think we break for lunch  
12 now.

13 MS. RUSSELL: I just want to let you know that on  
14 the back table -- I know people have been interested in the  
15 NRC/DOE agreement on the licensing system -- there are copies  
16 of that available. There are also kind of informational  
17 materials available about the whole process of negotiated  
18 rulemaking.

19 Avi is going to be doing about a 10 minute demon-  
20 stration of the system, if you are interested, right before  
21 lunch. We will do the demos again this afternoon, but he is  
22 available now. And as of yet, we have not had an overwhelm-  
23 ing response in our request for a dollar for coffee, so we  
24 would appreciate it if you could perhaps dig deep into your  
25 pockets. And we will see you back here around 1:30.

(Whereupon, at 12:07 p.m., the hearing was recessed  
to reconvene at 1:30 p.m., the same day, April 29, 1986.)

A F T E R N O O N S E S S I O N

1:38 p.m.

1  
2  
3 MS. RUSSELL: We have the licensing support  
4 system up and running now, so, hopefully, when the next  
5 demo comes up, it will still be up and running and you can  
6 see how it works.

7 The first part of the agenda for this afternoon  
8 is going to be dealing with allegations in the nuclear  
9 waste program. Joe Bunting is going to start off, and  
10 hopefully, when he is done, Chip Cameron will be back to  
11 finish the rest of it. Here is Joe.

12 MR. JOE BUNTING: The subject of allegations  
13 covers both allegations, investigations, and enforcement.  
14 And I am not really going to say a whole lot about it,  
15 except to tell you that we have underway a systematic inves-  
16 tigation looking into the adequacy of existing procedures  
17 as they might apply to the high-level waste repository  
18 licensing program.

19 As you can well imagine, the procedures that the  
20 Commission has in place today were put in place to deal with  
21 the licensee who is a commercial entity. And those proce-  
22 dures began to take effect at the time at which the Commission  
23 has some enforcement authority. And the way the rules are  
24 today that authority takes place with the filing of the  
25 application.

1 So, number one, the existing procedures, if we are  
2 to use those for the high-level waste repository program,  
3 would only take place after the application was filed. We  
4 are dealing with a different kind of licensing process here;  
5 one in which formal submissions are required both by our  
6 rules and by the Nuclear Waste Policy Act. And they come in  
7 before the application is filed, and we have no way to exer-  
8 cise any enforcement action over the accuracy of those docu-  
9 ments or completeness of those documents.

10 Except we could reserve whatever we wanted to  
11 reserve and what we found, and then make it a fact after  
12 the applications were filed.

13 Questions come up also have to do with how adequate  
14 are the understandings between the two federal agencies over  
15 how to treat the investigation of any particular allegation.  
16 Not being the expert, I am going to try to cover for Chip.  
17 It is my understanding that if we were to get an allegation  
18 for a typical licensee and it had to do with some impropriety  
19 on the part of the licensee or the licensee's employees or  
20 contractors, if we were notified of that prior to the receipt  
21 of the application, our current procedures would be to notify  
22 the applicant, potential applicant, that we have this allega-  
23 tion.

24 We would tell him what it was. We would not dis-  
25 close the confidentiality of the person who made the allegation.

2/40  
1 We would protect that. And we would tell the applicant that  
2 we would expect that allegation to be addressed in full when  
3 the application is tendered. When it came in, if the allega-  
4 tion was not handled to our satisfaction, the investigation  
5 was not handled to our satisfaction, or if now another allega-  
6 tion is filed after the application is received, then the  
7 Commission has discretion to conduct its own investigation.

8           If after that investigation evidence was sufficient  
9 to warrant prosecution -- let's say a material false state-  
10 ment, for instance -- we would then turn that over to the  
11 Department of Justice for prosecution. We could in lesser  
12 cases fine the applicant. The question is how adequate are  
13 these existing procedures when the applicant is another  
14 agency of the federal government. Does the Department of  
15 Energy recognize that the Nuclear Regulatory Commission has  
16 the authority to conduct investigations? After all, the  
17 Department of Energy has its own inspector general, which is  
18 established by law, independent from the secretary.

19           But these are things we do not have the answers  
20 to yet, but the purpose of this is to tell you, again, that  
21 we are thinking about them. These are not the kinds of  
22 situations that we would like to have just found out about in  
23 the course of a licensing proceeding, and then time strings  
24 out while we make these investigations and determinations as  
25 to how and what changes need to be made in our procedures.

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1           So, again, as a part of the streamlining process,  
2 we are trying to look at all there is in the process to find  
3 potential impediments that would string out this hearing.  
4 And we are trying to put some effort on those issues today  
5 to try and resolve them before the hearing gets here.

6           Just to digress a minute and go back to the case of  
7 a fine, if the Commission were to fine the Department of  
8 Energy and they elected not to pay, I don't know what all we  
9 could do about it. Those are some of the things we have to  
10 think about. If it is a commercial entity, that probably is  
11 a sufficient way to motivate them. I am not sure it is the  
12 appropriate mechanism to motivate the federal agency.

13           In a commercial entity, if an individual makes a  
14 material false statement, the government can prosecute the  
15 individual. There are some questions whether you can do  
16 that to a federal employee. So, maybe some other method may  
17 be needed. For instance, maybe the person needs to be banned  
18 from the program, as opposed to prosecution, if the federal  
19 law says you can't prosecute a federal employee for acts he  
20 did on the behalf of the department.

21           These are uncertainties that we have. They are  
22 uncertainties; we do not have answers. So, that is to let  
23 you know that we are looking at it. If you have any ideas  
24 along these lines that you would like us to pursue, we would  
25 be glad to hear from you. If you have suggestions as to how

1 the system should work, we would be glad to hear from you.  
2 Our course of action today is that we are going to take a  
3 systematic look at this whole procedure, and we are going  
4 to sit back and say, without being constrained by anything  
5 that is in place at the moment, we would like to look and see  
6 how we would like this process to work.

7 And then we are going to take a look at the existing  
8 procedures and say, okay, is it feasible to modify the current  
9 procedures and change them so that they will apply equally  
10 well to the commercial side, as well as the government side.  
11 If we can, we will. If we can't, then we will propose to set  
12 up a separate procedure, much like we are for Part 2 for handl-  
13 ing the rules and records, for allegations, investigations,  
14 and enforcement.

15 We have reached no conclusion on that yet, and it  
16 is just to let you know the status of something else that we  
17 are looking at.

18 Mr. Cameron, would you like to add anything at  
19 all?

20 MR. CAMERON: No, I don't think so at this time.

21 MR. BUNTING: Okay. Does anyone have any questions?  
22 If not, that is all we are going to say about that. It is  
23 just to let you know we are looking at it. These are the  
24 kinds of things we are trying to target resources on, to get  
25 impediments out of the way before we get in a crunch. Whether

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1 you have any ideas on this particular topic or anything else  
2 that you are familiar with in NRC's proceeding that may be  
3 a target of opportunity for us to focus on, in order to  
4 achieve some efficiencies in the licensing process, we would  
5 very much like to hear from you.

6 I will turn this over now to Avi Bender, on the  
7 open item tracking system.

8 MR. AVI BENDER: The objectives of the open item  
9 management system is to develop some kind of a process to  
10 identify issues, track them to resolutions as early as possi-  
11 ble, so by the time we get to discovery, hopefully, many of  
12 these contentious points can be put aside.

13 We have at this point developed a prototype of the  
14 system, and before I go into a description, what I would like  
15 to do is give you a little bit of a history of how we got to  
16 where we are. And again, this goes back to that famous  
17 summer of '84.

18 At that time we met again with the states and the  
19 tribes and we presented a general concept for a system.  
20 Keeping in mind now that we are talking about a system now  
21 that is not just the computer part of it, but it is the  
22 participants, the information, the procedures, and then  
23 assistance with some kind of computer technology for handling  
24 the information.

25 And basically, the way the system was structured

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1 was that issues obviously could be raised by anyone in this  
2 process. Those would be brought to the attention of the NRC,  
3 and then they would somehow be filtered and go through an  
4 internal process, get into the system. Eventually, reports  
would be generated, leading to resolution at some point.

5 This information would go to the public. You would then pro-  
6 vide us with your comments, and then the feedback back into  
7 the system.

8  
9 The most difficult aspect there is that little box  
10 that says "Process NRC," as far as how do you actually resolve  
11 issues and what are we doing about them. John Linehan, the  
12 acting branch chief for the repository project branch, will  
13 be addressing this in greater detail in a few minutes.

14 So, where do we stand right now? We initiated this  
15 effort in '84. We have a prototype of the system on an  
16 IBM PC, on a D Base III package, and I can show that to you  
17 during the break. I hope that works.

18 We have established a task force to look into these  
19 issues. The word "issue" means many things to many people,  
20 and we all use it differently. It could be a technical area  
21 of concern. It could be an information need. And when you  
22 think about the complexity of this process, you sort of  
23 realize that we are dealing with thousands of questions that  
24 have to be answered. How then do you track all these ques-  
25 tion and who has the right to identify them, and who gets

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1 them into the system, and so forth?

2           So, we had to initiate a task force effort within  
3 our division to look into this problem. And basically, the  
4 approach that we are taking is to find a certain level of  
5 detail which is trackable. Think maybe of buckets. These  
6 broad areas that are amenable for tracking, and yet if any  
7 question is raised in the future, it would fit into these  
8 individual buckets.

9           What this level of detail is we haven't come to  
10 agreements amongst ourselves, but we are moving in that  
11 direction, and something should happen within the next two  
12 months or so.

13           Next, please. (Pause.)

14           It is really necessary to put this system in  
15 perspective and how it fits within the organization. It  
16 should not be looked upon as a bureaucratic or just an admin-  
17 istrative function. But it really plays an integral role  
18 in strategic planning within the Division of Waste Manage-  
19 ment.

20           If you can imagine this information pyramid, at  
21 the very apex you have the Nuclear Waste Policy Act. Under  
22 that, you then have the Code of Federal Regulations and all  
23 health and safety regs, including the EPA. Then we have  
24 what is known as program planning guidance. The commissioners  
25 provide us with these broad objectives, goals that we have to

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1 meet with respect to public health and safety.

2 We then have to take these broad goals and trans-  
3 late them down into more workable goals, as we get towards  
4 the lower staff people, middle management. So, from that,  
5 we go into our five-year strategic plan, which looks at the  
6 Commission directive and basically says, for the next five  
7 years, these will be the programs we will be pursuing.

8 At about this stage, we then get into this issue  
9 identification process. What are the important questions  
10 that have to be answered before licensing? How can we prior-  
11 itize? Who will be responsible for doing the work? What  
12 guidance are we to give to the Department of Energy, as they  
13 get ready for the SCP (ph.) process?

14 . Once we have identified these issues, we can then  
15 move into our individual work plans or work breakdown struc-  
16 ture, which gets down to the level of telling an individual,  
17 "This is your specific assignment." And the assignment  
18 could be having meetings with DOE, preparation of generic  
19 technical positions, and the like.

20 Ultimately, we move toward resolution, and John  
21 will be talking about that in more detail.

22 I will try to now begin to go from this general  
23 concept into something substantive, so that you can have a  
24 better understanding of what it looks like.

25 As soon as you begin to want to track something,

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1 you then have to basically establish criteria, because if you  
2 are going to be tracking something, there has got to be a  
3 status, milestones, and some responsibilities, priorities,  
4 the work plans that I was talking about. And these are the  
5 criteria that we set for ourselves.

6 We have developed a preliminary set of these open  
7 items, or issues, if you will, in the areas of waste pack-  
8 age and seismology. These are now going through our staff  
9 review. And these are the individual fields that we think  
10 are appropriate for tracking.

11 I would like to take this a step further and show  
12 you a sample report from the system. (Pause.) This is  
13 still in a draft stage. This was prepared by some of our  
14 waste package specialists. The very first item is this  
15 open item issue.

16 As you read that, you may draw the conclusion that  
17 either it is too detailed or it is too broad. That is  
18 basically the kind of arguments that we are having amongst  
19 ourselves in trying to reach an appropriate level for track-  
20 ing.

21 The next field is one -- when this initial issue  
22 was identified. We do anticipate that some of these issues  
23 will be identified from people sitting out here, in fact, as  
24 you write in letters in response to environmental assess-  
25 ment or <sup>our</sup> generic technical positions. We will then have to

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1 take this through our internal process and make sure that  
2 your concern is addressed, gets into the system, and to  
3 some type of a disposition file.

4           If it is a unique issue that has never been raised  
5 before, then it will get into the system as a new issue.  
6 Otherwise, it will be addressed in a disposition file.

7           The next paragraph is the background statement.  
8 Not everyone is familiar with waste package. I am not famil-  
9 iar with that myself. So, since this will be a publicly  
10 documented report, it is really critical to have someone  
11 who has the intimate understanding of what the significance  
12 of this is, as with respect to health and safety, convey  
13 that in good language and easy language to that person who  
14 doesn't have that understanding.

15           So, the reason for this background statement is  
16 to basically let you know why is this important with  
17 respect to health and safety.

18           The next item are the key words. The key words  
19 have different significance here. They will be used to  
20 retrieve this information at a later stage, once the system  
21 has quite a few issues in it. But the key words also pro-  
22 vide a linkage to other issues. It is very difficult to  
23 take one specific area of waste package and really look at  
24 it as one unique entity. It always refers to some other  
25 issues. They cut across many disciplines.

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1           So, the key words provide a linkage among the  
2 various disciplines, in addition to being able to search  
3 with them, to retrieve them at a later date.

4           The next field is the status. What is NRC doing  
5 about this? What is going on between the NRC and DOE to  
6 try and get this particular issue resolved? What are some  
7 of the new developments? It is estimated that that field  
8 would be updated on a periodic basis, maybe on a monthly  
9 basis, as new information arrives.

10           The next item is milestones. Maybe not necessar-  
11 ily written the way it is shown there, but this is the activ-  
12 ity of what is happening next, where are we going from here.  
13 The intent here also is to use this kind of a form in prepara-  
14 tion for meetings with DOE and the states and tribes. We  
15 really have to begin to focus our attention on resolution of  
16 issues, rather than speaking at a very broad level. So,  
17 this provides that kind of focus to help us crystalize our  
18 ideas.

19           And we have a list of references. If you tap a  
20 system into references in waste package, you will be innun-  
21 dated with hundreds of references, not all of them necessar-  
22 ily relevant to resolving the issue. The references we have  
23 here were felt by the individual staff members to be partic-  
24 ularly pertinent, to indicate that progress is being made,  
25 maybe slowly but surely, towards the resolution of the issue.

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1 And the remaining information has to do with who  
2 the scientific person is, the project officer, which particu-  
3 lar section of the 10 CFR this issue relates to, and so  
4 forth.

5 Now, this is just an individual report, a snapshot,  
6 if you will, at a particular point in time. If you look at  
7 this report two years from now, you will have a chronology  
8 of events, things that have taken place over the last two  
9 years toward resolution. So, all of the information remains  
10 in the system, all the status statements, the references,  
11 the background information, including the individual respon-  
12 sible. We have a turnover rate in our organization and in  
13 many organizations; one individual may not be around and some-  
14 body else will take over his or her place. So, we have a  
15 complete record of who was involved and so forth.

16 Unlike the information management system that I  
17 described earlier, this is more project management and control  
18 to really help us focus our attention. Now, theoretically,  
19 and really practically, there will be a linkage between this  
20 system and a licensing support system, at least the interim  
21 version that is being developed by the NRC, in that you would  
22 be able to get access to the references listed below under  
23 full text system.

24 Next slide. (Pause.) At this stage, we are  
25 continuing the process of identifying these issues, reaching

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1 agreements within our staff. We have a diverse group of  
2 scientists and technical people. Not everyone thinks the  
3 same way, so we are trying to build consensus and move toward  
4 a system that will really meet the needs of our division  
5 and then provide that to the public for your comment, as  
6 well.

7 In the very near future, then, we hope to go  
8 into full scale implementation. Right now we have just  
9 focused on Nevada issues for waste package and seismology.  
10 If we can get through that, we can then continue with the  
11 rest of the disciplines and move on to the other sites.

12 Are there any questions?

13 MR. STEVENS: Based upon the work that some of us  
14 were involved in a couple years ago, a couple questions come  
15 to mind. One is the thing that you talked a little bit  
16 about, and that is what the threshold is for the identifica-  
17 tion of an issue and what kind of criteria or standard that  
18 you could use for that.

19 And the other one is just simply monitoring what is  
20 going on and how do you get some change in that issue into  
21 the system. Is that just a discovery by accident or if you  
22 hear about some statement at a meeting or some relevant  
23 meeting of which there were notes that impacted on a partic-  
24 ular issue? What kind of thing have you done in those areas?

25 MR. BENDER: The way these issues are being

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1 identified now is just part of this proactive process by our  
2 staff. And these issues are being identified through a  
3 review of environmental assessments. For example, the site  
4 characterization analysis for the BWIP (ph.) project of  
5 several years ago was a source of many issues.

6 Our interaction with DOE, the meetings that we  
7 have -- as a result of the meetings, there are always follow-  
8 up items. And sometimes during the course of those meetings  
9 new questions come up that have never been raised before.  
10 So, we anticipate that a primary source for these issues,  
11 technical questions, also policy questions, will be from  
12 reviewing DOE documents. But we can't always just sit back  
13 and wait for DOE documents. We have to get into this pro-  
14 active mode, and that requires going into the literature our-  
15 selves and basically reviewing that to identify areas that  
16 have yet to be addressed by DOE, and then provide that  
17 information on a timely basis, so it is usefully and meaning-  
18 ful to DOE, as they get ready to do their site characteriza-  
19 tion plans.

20 These reports are then made available. They provide  
21 for our staff kind of a focus of attention as to where to  
22 go next. And as a result of the meetings, as a result of  
23 generic technical positions that are written, as a result  
24 of the comments that come back, we then begin to really  
25 focus on these issues. And periodically, as new information

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1 comes in, then the status is changed and new milestones are  
2 put into place.

3 By having the individual's name, for example, on  
4 the report, you begin to shine the light on a specific  
5 individual and his or her responsibility. That individual  
6 is responsible for monitoring the status of a particular  
7 issue. And that individual is responsible for always follow-  
8 ing up. It is not something that gets written in a report  
9 that is put aside and forgotten about; it continues to get  
10 into the system.

11 Yes?

12 MR. PHIL ALTOMARE: Issue tracking is a process  
13 that we do want to follow, and we are working with internal  
14 procedures, as well, that we will have written up and will  
15 be available for other people to look at as we put this  
16 issue tracking system -- I shouldn't say that -- open item  
17 management system in place. And these will be approved and  
18 agreed to by the staff.

19 But essentially, we are making sure that no open  
20 item or issue gets lost. There is to be a disposition file,  
21 also. It is conceivable that some issues will be resolved,  
22 but when they drop out, they will go into a list that says,  
23 this is what happened to that issue, and it will always be  
24 available. There will be issues coming in from the outside  
25 that we will consider, and those will also be identified as

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1 having been considered and go into a disposition list.

2 MR. STEVENS: Thank you. Another perhaps more  
3 general question, and that is the reference basis upon which  
4 you are developing the system. That is two prong. One is  
5 identification of issues and the other is issue resolution.  
6 Do you intend to take on an advocacy role in terms of resolv-  
7 ing issues of dispute between DOE and a particular state or  
8 an Indian tribe?

9 MR. BENDER: If you don't mind, I would like to  
10 leave the answer to that to John Linehan, which is really  
11 the subject of his presentation, as how exactly we are going  
12 to be focusing attention on issue resolution and the differ-  
13 ent mechanisms for doing that.

14 Any other questions? (No response.) Thank you.

15 MS. RUSSELL: Could we digress for just a minute  
16 before the next demonstration? I would like to introduce  
17 you to Paul Prestholt. Paul. For the three different  
18 geologic mediums that we are looking at for the first reposi-  
19 tory program, salt for salt (ph.), as well as tuff (ph.),  
20 we have an on-site licensing representative from the NRC  
21 to kind of keep track of what is going on at the various  
22 sites and to work with the Department of Energy. Paul is  
23 our on-site licensing representative for the Nevada project,  
24 and he is going to talk with you just for a minute about  
25 his role as the on-site licensing rep.

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1 MR. PAUL PRESTHOLT: The on-site licensing repre-  
2 sentative program started in late fall of 1983, when Mr.  
3 F. R. Cook was assigned to the BWIP project, in Richland(ph.),  
4 Washington. In January of '84, Dr. Tillich Verma reported  
5 to the SRPO, the salt project office, in Colombus, Ohio, and  
6 I reported in here.

7 The primary purpose of the position is to be a  
8 liaison between the director of the Division of Waste Manage-  
9 ment, Nuclear Regulatory Commission, and the DOE project  
10 office. I work -- and the three of us work directly for the  
11 division director. We are independent of any single branch;  
12 however, we work in very, very close cooperation with the  
13 various branches.

14 The work that takes place is to the greatest extent  
15 technical. Our major mission is one of technical interaction  
16 with the DOE office. The interactions with the states has  
17 been retained with the project control branch, Mr. Bunting's  
18 branch. However, as I understand, with the increased atten-  
19 tion of the states to the program and the possibility of  
20 work being one, technical work being done at the various  
21 sites, our role with the states may be expanded.

22 At the present time, I have not traveled to any  
23 meeting outside of the city of Las Vegas to meet with the  
24 state; however, I have attended a number of meetings here  
25 in Las Vegas for the PC branch and reported to them as to

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1 what happened at those meetings.

2 As far as the technical interaction is concerned,  
3 another very important part of our assignment is to identify  
4 and bring to the attention of the DOE at an early time poten-  
5 tial problems and issues that we may identify as we look at  
6 their program and interact with the various people associated  
7 with their program. At the same time, of course, we do make  
8 these issues and problems known to our own technical staff  
9 in Washington, so that the resolution the continuance of  
10 interaction with th e issues is between technical staffs.

11 We are in no way in a position to make deals with  
12 the DOE. We do not make policy. We do at times interpret  
13 policy to the best of our ability, recognizing that in some  
14 cases it is kind of filtered by the time it comes through us,  
15 and the response can be filtered going back in the other way.  
16 But the primary idea of the position is to make those inter-  
17 actions smoother and to make the work between the two organ-  
18 izations more meaningful.

19 We have been instrumental at times in initiating  
20 meetings between NRC and DOE. We have something called an  
21 Appendix 7, to a site specific agreement between DOE and  
22 NRC. And in Appendix 7 it has been identified that indiv-  
23 iduals assigned to the OR office have the same privileges  
24 as the OR. Therefore, when staff members from Washington  
25 come to Las Vegas, they can interact in an informal way

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1 with particular people at DOE, in a very specific manner.  
2 These are not necessarily very broad things. Usually, the  
3 interactions are focused on a particular problem or a par-  
4 ticular area of the investigation.

5 We have had a number of those. They have been  
6 quite successful. Normally, we invite -- if there is any-  
7 thing very extensive in the discussions, it has been my  
8 policy to invite the state to attend, with, of course, con-  
9 currence from Washington, and that has never been refused.  
10 I can't think of a time when I have been told I may not  
11 invite the state. And Mr. Johnson, I know, has been to a  
12 number of those meetings, both here in Las Vegas and at the  
13 various national labs that work for the NNWSI.

14 I would be glad to answer any questions. I believe  
15 that as the second repository states are identified for  
16 site characterization, there will be a similar position  
17 assigned to them. I don't think that is set in concrete at  
18 the moment. I don't think the job is that formally deter-  
19 mined. It has been successful to the present time. I think  
20 it is recognized as being successful by both the DOE and  
21 NRC. So, I don't anticipate that the position will be  
22 changed in any great way.

23 Does anyone have any questions concerning what we  
24 do and what we are supposed to do? (No response.)

25 MS. RUSSELL: We are going to take a break for the

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1 third demonstration. During the break, Nancy will be passing  
2 out sheets; it is a one-sheet piece of paper, and we would  
3 appreciate it if you could take the time to fill it out. It  
4 is basically an evaluation and critique of this kind of a  
5 meeting, and we would be very interested in getting some  
6 feedback from you on that.

7 So, Avi is available over there for the next  
8 demonstration.

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1 MS. RUSSELL: Next we are going to have John  
2 Linehan. John was not here this morning. John is the  
3 acting chief of our Repository Projects Branch and  
4 basically coordinates all of the NRC activities with the  
5 Department of Energy on the technical part of the  
6 program. So John is going to come here now and talk with  
7 you about activities with DOE and what is coming up in  
8 the future.

9 Also, for the people who are here from the first  
10 round, as you all probably remember, at least I have  
11 heard it numerous times, we had a meeting scheduled with  
12 the Department of Energy to discuss the level of detail  
13 in the site characterization plan. And that had  
14 originally been scheduled for April 24 and 25. The DOE  
15 asked to change that meeting. And I understand that it  
16 has now been firmly establish for May 7 and 8.

17 And we also wanted to make the point that we are  
18 offering the same opportunity for state and tribal reps  
19 to come in and talk with us a little bit about comments  
20 prior to the meeting with DOE on the 7th.

21 We also are inviting DOE to sit in on that pre  
22 meeting, so anyone who is interested in doing that, I  
23 would appreciate it if you could let us know.

24 With that, here is John.

25 MR. LINEHAN: Just to follow up on that proposed

1 meeting on the 6th of May, the reason we would like to  
2 sit down with the various states and tribes is to get a  
3 better feeling for what your positions are on the level  
4 of detail that is needed in the site characterization  
5 plan before we go into the more formal meeting on the  
6 next day with the Department of Energy. You will have an  
7 opportunity to review the pre meeting material. The  
8 Department of Energy has already sent it out. I don't  
9 know if you have received it yet. But it was sent out, I  
10 believe, Charlie, a week ago? Approximately then.

11           What we are very interested in, in this pre  
12 meeting and in the actual meeting itself with the  
13 Department of Energy, is to have active and, let's say,  
14 effective participation by the states and tribes. We  
15 would like to hear your views. If you look at the agenda  
16 for the meeting with the Department of Energy, we have  
17 carved out a significant block of time for comments, for  
18 dialogue with states and tribes and any other interested  
19 parties.

20           As I go into my discussion this afternoon, one  
21 of the most important things to this process of  
22 identifying issues early on and working towards closure  
23 of these licensing issues or open items related to these  
24 issues is that it is an open process, and that we do get  
25 effective participation by all parties involved in the

1 program. For us to be able to identify issues early we  
2 have to know what the various issues are in the various  
3 parties' minds for us to lay out plans as to how these  
4 issues can be resolved, how to better focus the program  
5 on resolution of these issues. We, again, need people to  
6 come forward early on in the process and lay out exactly  
7 what their concerns are.

8 Will you go to the first slide, please.

9 Unfortunately, I wasn't here this morning when Joe  
10 Bunting discussed the five-year plan. What I am going to  
11 be discussing, though, is the goals and objectives in the  
12 five-year plan that specifically relate to the early  
13 identification and resolution of licensing issues. You  
14 are going to have to pardon me. You may have had some  
15 discussions with Joe Bunting this morning. You may have  
16 had some questions that I am not going to be aware of. I  
17 just encourage you to ask the same questions of me, even  
18 though they may have been raised this morning.

19 The five-year plan is the basic operating plan  
20 that we are going to be following from now until 1991,  
21 which is the date when DOE is currently scheduled to file  
22 their license application. Within that plan there is a  
23 number of goals and objectives. What I have laid out on  
24 this slide is the major goals and objectives in the plan.

25 The first three here deal with licensing

1 guidance, developing guidance for DOE, issue  
2 identification and resolution of issues. And finally,  
3 what is going to be necessary for the NRC to develop an  
4 independent technical capability to review DOE's  
5 application within the three-to-four-year period time  
6 frame called for in the Waste Policy Act. What I am  
7 going to be talking about is the first three goals laid  
8 out here. The fourth has been pretty well covered by the  
9 other speakers today, or will be covered later on.

10           The first two goals here focus on development of  
11 an aggressive program to guarantee that adequate  
12 sufficient guidance is provided to the Department of  
13 Energy early on, so that they can develop a complete and  
14 high quality license application. In order to be able to  
15 determine what guidance is necessary, there is going to  
16 have to be interaction with all parties involved in the  
17 program so that we can jointly lay out what the important  
18 licensing issues are or the open items are that need to  
19 be resolved for this process to move ahead. Once we have  
20 identified what the issues are, we will go through a  
21 process that I will go into in more detail in a few  
22 minutes, develop what guidance is needed, what is  
23 appropriate at different phases of the program prior to  
24 the development of the site characterization plan and  
25 during site characterization, and finally what is

1 necessary prior to DOE being able to file a license  
2 application with us.

3           Once we have identified the types of guidance  
4 that are necessary, what we hope to do is lay out what is  
5 necessary to resolve the various issues that have been  
6 identified in this process that I will be going into in  
7 just a minute. What we hope to do is to focus the  
8 program on resolution of these issues, rather than have  
9 our interactions with the Department of Energy continue  
10 in the way they have in the past where we are mainly  
11 responding to DOE's particular position at any point in  
12 time.

13           What we would like to set in motion is a process  
14 where there is continual progress toward resolution of  
15 issues, where once everyone agrees on what the issues are  
16 we can lay out a basic process as to what needs to be  
17 done to resolve particular issues, some of them being  
18 generic issues, some of them being site-specific issues.

19           The third goal I have down here ties in with the  
20 top two, because it is going to be necessary for us as we  
21 identify the issues to determine what <sup>independent</sup> review capability  
22 we are going to need at the NRC to review the way DOE is  
23 addressing these various issues. We are going to have to  
24 determine what review capability is needed for the review  
25 of the site characterization plan when we develop our

1 site characterization analysis. We are going to have to  
2 determine what type of capability is necessary as data is  
3 gathered through the site characterization program, and  
4 finally what is going to be necessary for us to conduct  
5 an independent review at the time of the license  
6 application. The focus here is for us to develop the  
7 technical competency and ability to review what DOE is  
8 submitting to us.

9           As I mentioned, these are the three major goals  
10 in the five-year plan for identifying and resolving  
11 issues. As they are laid out here they are goals. What  
12 I would like to focus on in the rest of my discussion is  
13 how we plan on trying to implement these goals. Before I  
14 go into that, if I could have the next slide, I would  
15 just like to go over quickly some of the key elements of  
16 this five-year plan. I think it is very important that  
17 everyone understands these so they can appreciate the  
18 context in which I am going to be talking.

19           What we are looking at is a proactive as opposed  
20 to a reactive program. What we would like to do is to  
21 change from a position where we have been focusing on  
22 review of DOE documents. As DOE develops a document we  
23 develop comments in response to them. We do indeed need  
24 to recognize the importance of some of the program  
25 documents, the site characterization plan in particular.

1 But what we want to get away from is being tied down to  
2 the various changes that occur in the DOE schedules all  
3 the time.

4           It seems like we are constantly putting off  
5 things because of schedule changes. And I am not  
6 criticizing DOE for that. It is a fact of life in the  
7 program with the number of comments that we are getting  
8 on the various documents they are putting out. It is  
9 very difficult to schedule things and lay out things and  
10 meet a lot of those schedules.

11           What we are proposing is an independent  
12 activity, independent of those schedules, so that we can  
13 keep the program moving. We want to focus the program on  
14 the key licensing decisions that must be made by the NRC  
15 with respect to Part 60 of our regulations. What we are  
16 after here is, again I am going to keep repeating, it is  
17 early identification of what the issues are, what the  
18 open items are related to the various performance  
19 objectives in Part 60, considering the site information  
20 we have at the present time, developing site-specific  
21 issues under each one of these performance objectives for  
22 Part 60, again, focusing any interactions we have with  
23 the different site projects on trying to resolve these  
24 issues.

25           The ultimate goal here is to reduce the number

1 of issues that have to be litigated during the licensing  
2 hearing, and also to better focus the issues that will be  
3 litigated during that hearing. Now this whole approach  
4 is very dependent on us having a very open and documented  
5 process, so that all parties involved are made aware of  
6 information as it is generated, they are involved in the  
7 identification of issues, and there is involvement in  
8 development of the action plans necessary to resolve  
9 these issues.

10 In order to make sure that we achieve these  
11 goals, and that all parties understand exactly how we are  
12 going to go about doing this, what we are proposing is  
13 coming up with a mechanism to assure that we do focus the  
14 program on issue resolution. Now if I could have the  
15 next slide.

16 If you remember the four goals that I had up  
17 earlier, the first two of those goals deal with providing  
18 sufficient licensing guidance to the Department of Energy  
19 and sufficient interaction with the involved parties in  
20 this early identification of issues. What we feel is  
21 needed to achieve this is to develop a systematic  
22 approach on how we are going to go about developing this  
23 guidance and focusing the program.

24 The first step we see in the approach -- and I  
25 will point out this is our current thinking on how we

1 plan on going about implementing these goals, and we are  
2 looking for feedback from you folks as to the approach we  
3 are considering -- the first step, though, is the  
4 identification and prioritization of issues. Then once  
5 we get those laid out, again, come up with very specific  
6 mechanisms to make sure that we focus on resolving those  
7 issues.

8           The next slide lays out the key steps that we  
9 are proposing in identifying and prioritizing these  
10 issues. In the pre-meeting material that you received  
11 there was a memo there on implementation of the five-year  
12 plan which pretty well lays out our current planning  
13 activities now. What we are doing is going through Part  
14 60 and trying to identify the key licensing findings that  
15 must be made by the NRC. Then we are laying out in total  
16 work plans what needs to be done, what activities are  
17 necessary to make sure that these issues are resolved.

18           What we are looking at is generic compliance  
19 demonstration issues from the performance objectives in  
20 Part 60. We are laying out the compliance demonstration  
21 issues, then laying out what are the open items related  
22 to each one of these issues.

23           We are also going through a process -- those of  
24 you that are familiar with the NRC and the way we operate  
25 is we have a project team that is dedicated to each one

1 of the media. These project teams are going through a  
2 process right now of identifying in the various technical  
3 areas what we consider the key site issues, the key open  
4 items at each one of the sites. And they, in turn, are  
5 also developing work plans to lay out what needs to be  
6 done to resolve these issues by 1991. And again, 1991  
7 being the date for submission of the license application  
8 at the present time.

9           In this process that we are going through, what  
10 we are considering, I mentioned we are going back to Part  
11 60, but we are also considering all of the comments that  
12 have been generated to date. When we have issued an STP  
13 or a site technical position or generic technical  
14 position we receive comments from the Department of  
15 Energy and from other interested parties, states and  
16 tribes. As we lay out these issues we are considering  
17 all of those comments. In addition we are considering  
18 comments that were made by the various parties on the  
19 early BWIP site characterization report and the draft  
20 environmental assessments that were published by DOE.

21           Once we go through this process internally and  
22 have pulled a package together, what we are going to be  
23 doing is consulting further with DOE on what the issues  
24 are involving the states and tribes in these  
25 consultations. What we would like to do is reach some

1 agreement on what are the key issues that are facing the  
2 program. We will be addressing not only what are the key  
3 issues, but what are the outstanding open items related  
4 to each one of these issues.

5 Our intent here is to get things pretty well  
6 laid out so it is clear in everyone's mind what  
7 activities are necessary to resolve the particular  
8 issue. Once we have gone through that, we recognize that  
9 we cannot address each one of these issues, each one of  
10 the open items in the same level of detail. And there is  
11 going to have to be some prioritization. We can only  
12 have so many interactions with the states and tribes,  
13 with DOE, on issues over the next five-year period. What  
14 we want to do is maximize the effectiveness; focus in on  
15 the key issues.

16 A lot of the issues we are developing to date  
17 are what I would consider umbrella issues where there is  
18 a number of various issues that fall under them. Looking  
19 at these key issues, umbrella issues, we are going to  
20 look at what the importance is to the program, try to  
21 identify those that are most contentious, those that are  
22 critical to early phases of the program, and in  
23 consultation with DOE determine where they feel guidance  
24 is most needed, what areas they want guidance in.

25 One of our main responsibilities during this pre

12  
1 licensing consultation period is to provide adequate  
2 guidance to the Department of Energy. Again, through  
3 this whole process, we want to make it an open process.  
4 And we are looking for input from all of the parties  
5 involved.

6 One of the things we recognize is that in going  
7 back to Part 60, trying to identify issues, going back to  
8 comments that have been raised to date on various  
9 documents, we won't necessarily pick up every issue.  
10 When we wrote Part 60, we don't believe it is a magic  
11 regulation where the words pick up every issue that needs  
12 to be considered. From the perspective of the various  
13 parties involved in the program we need some feedback  
14 from you folks as to what you think is important. Again,  
15 I can't over emphasize that this approach will only work  
16 if you do raise these things early on so that we can  
17 consider them in this process that we are going into. It  
18 is not going to help any of us if people don't bring  
19 their concerns to the front so that they can be  
20 considered as we lay out plans for addressing the various  
21 issues.

22 One of the important things we are going to have  
23 to do as we go through this prioritization process that I  
24 want to make sure is clear is that we have to worry about  
25 how things are going to fit into the overall program

1 schedule. I have talked about this approach being  
2 proactive and reactive where we don't want to be in a  
3 position where we are responding to reports that are  
4 issued by the Department of Energy. But we better remain  
5 keenly aware of overall program needs and program  
6 schedules. An example would be there are certain issues  
7 that need to be -- I won't say resolved, but addressed in  
8 detail prior to DOE coming in with a site character-  
9 ization plan.

10 We have to recognize that as we prioritize these  
11 things such as test plans for hydrologic site  
12 characterization need to be addressed early on in the  
13 program so that we have given DOE appropriate guidance as  
14 to what we think is necessary in the SCP so that they can  
15 present an adequate test plan.

16 Once we go through a process of reaching some  
17 general agreement on what the issues are, prioritizing  
18 them to determine how they should be handled, what we are  
19 proposing -- if you will go to the next slide please --  
20 is the need for a mechanism to focus the program on  
21 resolving these issues. Again, what I am talking about  
22 is our current thinking. We are still in the planning  
23 process here.

24 The first thing we feel we need to do is to  
25 agree on consultation points, when and how we are going

1 to be addressing these various issues. In the past, in  
2 comments that the Commission has sent to the Department  
3 of Energy on the project decision schedule, we have  
4 emphasized the need for DOE to lay out their milestones  
5 and schedules. This is important so that we know when we  
6 should be providing guidance to them. We need to know  
7 when they are going to be developing a particular site  
8 characterization plan so that we can get input to them  
9 during the early development of that plan. And it is  
10 even going to be more important under this new proaction  
11 approach that we are talking about.

12           We need to know DOE schedules. We need to  
13 consider them. They are very important in laying out  
14 this process, so that we can provide timely guidance to  
15 them. Again, those of you that are familiar with the  
16 BWIP site and the site technical position on hydrologic  
17 characterization that has been developed at that site  
18 recognize that that is something that was developed years  
19 ago. And it has been guiding development of their site  
20 characterization in the hydrology area over the past  
21 several years. It is a key document. It is early  
22 guidance to DOE. And what we are looking for in all of  
23 the critical program areas is developing some type of  
24 similar document that lays out a basic strategy to be  
25 followed in developing technical plans for each one of

1 the sites in the various technical areas.

2           The consultation points that we are going to  
3 agreeing on are generally going to be meetings, technical  
4 meetings, workshops, between the NRC and DOE with  
5 participation by the states and tribes. What we want to  
6 strive for is developing agendas for these meetings that  
7 focus on approaches for resolving issues. I think most  
8 of the meetings that we have had in the past have been  
9 very good. They have been very meaningful. But there  
10 haven't been well-focused technical discussions in many  
11 cases. They have been DOE presenting data, what their  
12 current thinking is on a particular technical program.  
13 And there has very often been a lack of good technical  
14 discussion on what the real issues are. And what we  
15 would like to do is turn that around somewhat.

16           In order to do this, again, I bring up the part  
17 about effective state and tribal participation. If we  
18 focus the agendas better, if we get out the pre meeting  
19 materials in a timely manner, we don't see any reason why  
20 we cannot have better participation by the states and  
21 tribes. I have been at number of meetings over the past  
22 couple of years related to the various sites. And it is  
23 having enough interaction and participation of  
24 very disappointing not / a number of state and tribal  
25 representatives there. In some meetings we do get some  
good feedback. But in the majority of the meetings I

1 have been in there is very little feedback from states  
2 and tribes. And that is something we need. We cannot  
3 overemphasize it. We are going to keep progressing  
4 forward with the program, and we don't want your concerns  
5 coming out later on after we have had meetings with the  
6 Department of Energy, agreed on approaches, agreed on the  
7 ways to resolve the various issues. Anything we can do  
8 to make this process more meaningful, make it easier for  
9 you folks to participate, we would like to know. And  
10 any feedback you would like to give me on that, give  
11 Cathy Russell, we would appreciate.

12           The final thing we see coming out of these  
13 meetings is we would like to come up with a set of  
14 meeting minutes that don't contain just very basic  
15 conclusions and action items. What we would like them to  
16 do is reflect progress towards resolving issues. What  
17 are the basic agreements? What are the basic  
18 disagreements that exist? And have the action items  
19 identified those activities that are necessary to achieve  
20 resolution? What we would be looking at is documentation  
21 that would essentially lay out for the record where we  
22 stand. And when I say "we," DOE, NRC, other interested  
23 parties, where we stand on issues and what needs to be  
24 done to proceed with resolution of these various issues.

25           On the next slide, once we have gone through

1 this process of scoping out the issues and determined in  
2 meetings what needs to be done to work on resolution of  
3 these issues, we see using the mechanism of generic  
4 technical positions, site-specific technical positions to  
5 establish and document consensus on agreements that have  
6 been reached at meetings with the Department of Energy.

7 And this isn't just agreements, this is also  
8 disagreements.

9           For those of you that are familiar with the  
10 STP's, the GTP's we have issued to date, we are not  
11 talking about sticking to the rigid format that we have  
12 used in the past. We realize these need to be flexible,  
13 depending on what the purpose of them is, the scope will  
14 change. And they are going to vary considerably,  
15 depending on the purpose that they are going to have in  
16 this issue resolution process. What we would like to do  
17 in these technical positions is to lay out what the basic  
18 position is of the NRC in a particular issue and  
19 ventilate that position.

20           Going to peer review groups, this would be the  
21 technical community, this would be our advisory committee  
22 on reactor safety, going out for public comment possibly  
23 in the Federal Register, and finally trying to identify  
24 target groups, groups with expertise on any particular  
25 issue. What we are going to try is to get the maximum

1 ventilation of any issues so that we can get all of the  
2 comments that are out there, all of the opposing views,  
3 so that we can get those to surface.

4           In the past, very often if we issued a technical  
5 position in draft form it would state what our basic  
6 position was. And that was pretty much it. What we are  
7 considering in technical positions that we are going to  
8 be issuing in the future is not only to lay out what our  
9 basic technical position is, but also to request comment  
10 on some of the most contentious areas of that position.

11 In some cases we may find that there is significant  
12 disagreement on what the position should be. What we are  
13 going to be doing is actively soliciting comments from  
14 folks on these various issues, rather than just issue a  
15 technical position that is fairly cut and dried, is to  
16 lay out what some of the problem areas are, to try to get  
17 feedback and to try to get comments.

18           Once we go through this process to draft a  
19 position, we would be looking, as we have in the past, to  
20 finalize these various positions in final technical  
21 positions. And what we would try for in these final  
22 technical positions is to get agreement from the  
23 Department of Energy on the position that we were taking,  
24 get agreement from the involved states and tribes. Now,  
25 these positions will be developed in consultation, in

1 coordination with DCE, with the states and tribes.

2 We realize we are not going to be able to  
3 resolve all of the concerns. I don't want to lay this  
4 out as something over optimistic, pie-in-the-sky. But  
5 what we want to do at least is to lay out where we stand  
6 on the various issues, where we need to go from here.  
7 Hopefully on a number of them we can reach an agreement.  
8 But for those where we cannot, at least we can get to the  
9 point we can say we have agreement on certain aspects of  
10 the issues and scope out the areas where future work is  
11 needed.

12 There is different types of technical positions  
13 that we will be considering here. Two examples that I  
14 have got down are strategies and methodologies. The  
15 technical position that exists on hydrologic testing  
16 at the BWIP site is an example of a technical position on  
17 a testing strategy. It lays out a basic strategy for  
18 hydrologic site characterization. It lays down some very  
19 crisp basic ground rules that will be followed by the  
20 Department of Energy in developing the hydrologic site  
21 characterization plan for that particular site.

22 Those of you that were involved in the December  
23 meeting we had with the Department of Energy on  
24 hydrologic site characterization at BWIP are familiar  
25 that the result of that meeting was DOE taking a position

1 that the proposed testing program that they discussed in  
2 the meeting wasn't consistent with the site technical  
3 position. And it was agreement to go back to what was in  
4 the site technical position and redevelop the hydrologic  
5 testing program.

6           What the technical position did, it provided us  
7 a baseline to go back to. At one point in time we had  
8 agreements on what needed to be done at the site. And  
9 rather than having the meeting develop into just a  
10 disagreement on what needed to be done, we were able to  
11 fall back on the key elements of that position, agree  
12 that either they were still good, or if they needed to be  
13 changed, there had to be adequate justification  
14 provided. But what it did was it didn't make us go back  
15 to square one and start discussing the basic aspects of  
16 hydrologic testing at that site all over again.

17           So a lot of these positions we are talking  
18 about, they are going to progress as the program  
19 progresses. Right now, or in the near future, they may  
20 be basic strategies. As data is collected at the site,  
21 some of these positions will be refined, as we work  
22 towards resolution of the various issues that they  
23 address.

24           The other type of technical position that I have  
25 got listed here deals with methodology. One of the

1 things that is critical to the program right now is  
2 laying out exactly what is going to be necessary to show  
3 compliance with the EPA standard, what is an acceptable  
4 methodology for implementation of that standard. We are  
5 in the process right now of considering development of a  
6 draft technical position to address this issue. We are  
7 not sure if it is something that should be pursued in the  
8 form of a technical position or if it is something that  
9 should be taken to rulemaking. But our goal here is to  
10 get agreement, to get some resolution on what is going to  
11 be necessary to show compliance with that standard.

12           And I keep saying "we." This is something we  
13 are going to have to be doing with the Department of  
14 Energy. As we go into this proactive approach, we want  
15 to be very careful, because it is a thin line we walk  
16 here. We don't want to be overly prescriptive and tell  
17 the Department of Energy what they should be doing. We  
18 want to lay out the issues. We want to make sure the  
19 program is focused on what is necessary to proceed with  
20 resolution of those issues. Any GTP that the NRC comes  
21 up with is really going to deal with an acceptable  
22 approach. It is an alternative that can be considered in  
23 broad and general terms in many cases. It is going to be  
24 up to DOE to come up with the specifics. Hopefully, as  
25 we go through this process, a number of the issues that

1 will be identified DOE will be working, not on technical  
2 positions, but on internal documents that will be  
3 addressing resolutions of these various issues.

4           So what we are talking about is a joint process  
5 here. It is not going to be the NRC developing a  
6 technical position on each and every issue that is out  
7 there. In some cases DOE will have the lead. But where  
8 they have the lead we would expect to have the same type  
9 of consultation with them, meetings on these documents as  
10 they were developing them, and meetings that would focus  
11 on the key elements of these documents, rather than just  
12 reviewing a draft document once it was developed, having  
13 consultations, having meetings with DOE as they are  
14 planning these documents, as they are laying out their  
15 basic strategy to be followed in development of test  
16 plans. The idea here is for early interaction, early  
17 involvement, before plans are fixed, before final  
18 decisions are made.

19           Let's go to the next slide. The final step we  
20 will be looking at in closing out issues prior to a  
21 hearing is rulemaking.

22           MR. DAVENPORT: Excuse me for interrupting your  
23 flow there, but I wanted to ask a question about the  
24 subject you have just been talking about, finalizing an  
25 issue early on about what, for instance, is necessary to

1 show that the EPA standard has been met. Though it is  
2 obviously valuable to resolve issues early on, here you  
3 have the ultimate question for licensing -- has the EPA  
4 standard been met? And I would suggest that this is not  
5 an appropriate issue to resolve early on.

6 MR. LINEHAN: Pardon me if I said that. That is  
7 not what I meant. It is <sup>to</sup> determine what is going to be  
8 necessary to determine if it has been met, what types of  
9 analysis are going to be necessary, recognizing those are  
10 going to change as we get data, but laying out basically  
11 what needs to be done to show compliance with the  
12 standard, laying out a general approach that can be  
13 followed.

14 MR. DAVENPORT: Then your reference to  
15 rulemaking is only with reference to the analysis that  
16 might be applied as opposed to the standard that --

17 MR. LINEHAN: It would only be the methodology  
18 to be followed here.

19 MR. DAVENPORT: Yes, because I think it is  
20 important to acknowledge that we have a quasi judicial  
21 activity going on in licensing. We have a board  
22 exercising its discretion and its judgment as to whether  
23 the standard has been met. And we certainly need to  
24 leave open, until licensing, the ability of the states to  
25 put on their cases on these substantive questions. And

1 to the extent that early conversation between the NRC and  
2 the DOE puts the DOE in the position of thinking that it  
3 has met the substantive standard merely because it has  
4 followed the procedures or put in the right amount of  
5 information, I think, is to give them a false impression  
6 about what may be the outcome of the licensing.

7 MR. LINEHAN: I think you have got a very good  
8 point. When we lay out these various methodologies it is  
9 going to be laying out at the present time what we feel  
10 needs to be done. As site data is gathered this could  
11 change significantly.

12 MR. DAVENPORT: One of the essential things you  
13 have to remember is that each one of these applications  
14 is going to be in a different media. And that means the  
15 method by which you would show implementation of the EPA  
16 standard or compliance with the NRC's statutory  
17 obligation of protecting the public health and safety is  
18 going to be different. So a rulemaking is either going  
19 to have to invent three or more independent methods of  
20 analyzing, or it is going to have to remain silent and  
21 wait until licensing actually happens and allow the  
22 parties in the licensing to put on both sides of that  
23 case and resolve it at that point.

24 I am not speaking against early resolution of  
25 issues. But I think that you have to be careful to

1 remember that there are some issues which are better to  
2 be left unresolved until you actually get in licensing  
3 and let the adjudicative system that we know of resolve  
4 that issue when we get there.

5 MR. LINEHAN: As I indicated, this is our early  
6 thinking. And what we are going to try to do is come up  
7 with criteria to determine what topics are best to take  
8 to rulemaking. Those that we are thinking of right now  
9 indeed are generic types of topics. They are not the  
10 sites specific. They rely too much on what is going to  
11 be developed in the future.

12 As far as the implementation of the EPA  
13 standard, it is a basic methodology we are looking at,  
14 what basically has to be done. There is going to be a  
15 lot of variations on that, depending on site-specific  
16 things. And that is recognized. It is not to close out  
17 forever the question of whether a site meets the standard  
18 or not. That isn't the intent. It is just to try to  
19 reach at a point with the generic methodology that we can  
20 reach agreement that this is generally what needs to be  
21 done. But there is a lot down the road that needs to be  
22 done before DOE can prove a site meets the standard, and  
23 before we either concur or not concur on that when we do  
24 our independent review, when we get the license  
25 application.

1 I think, if you look further down on this slide  
2 here, where I have got possible topics for rulemaking,  
3 the other one I have got listed there is the disturbed  
4 zone. What we are looking at right here is there has  
5 been quite a few questions that have come up regarding  
6 clarification of the disturbed zone, of the definition of  
7 the disturbed zone in various interactions we have had  
8 with DOE, and in comments we have received from outside  
9 parties or that DOE has received from outside parties.

10 Again, we wouldn't be considering defining  
11 disturbed zone at any one particular site, just further  
12 clarification on what is already in the existing  
13 regulation. That is all we are looking at right now,  
14 just to try to take a couple of steps forward at this  
15 point in time. This is something we are just looking at  
16 right now. What we have got to do is we have got to weigh  
17 the time it is going to take to be involved in any  
18 rulemaking on any of these various issues and look at  
19 what the benefit is to the overall program. The overall  
20 goal we have here is to try to resolve these things as  
21 best we can, to focus them as best we can prior to going  
22 into the actual license review in the license hearing.

23 As we go through this process, the actual number  
24 of issues that we do take to rulemaking may be very few.  
25 We are going to have to look at what the impacts are on

1 the program to enter a rulemaking, their significant  
2 resource impacts. But going through this process of  
3 trying to focus the meetings, trying to focus technical  
4 positions on resolution of issues, all of that will lead  
5 to formal resolution of how we are going to handle these  
6 issues.

7 I am not saying that once we get to a technical  
8 position that there is not going to be quite a bit of  
9 contention at the time of the licensing hearing. But at  
10 least reach some agreement on various issues at various  
11 levels, at the staff level, at the level of various  
12 management in the different organizations, the different  
13 parties involved.

14 I am not sure whether I have answered your  
15 question on the rulemaking. I don't want to gloss over  
16 the point you made.

17 MR. DAVENPORT: I don't think you have glossed  
18 over it. But the next question becomes how much  
19 rulemaking do you need if the issues are either  
20 site-specific or issues on which parties really need  
21 essential day in court. Can you further resolve this in  
22 identifying rulemaking?

23 MS. RUSSELL: Jim, could you either say that  
24 into the mike --

25 MR. DAVENPORT: -- or not say it at all?

1 MS. RUSSELL: He can't hear what you are  
2 saying. We have no mike over there. Would you just  
3 generally restate it before he answers it.

4 MR. DAVENPORT: They have heard it, that is the  
5 important thing.

6 MS. RUSSELL: But the transcript needs to show  
7 what it says, what the question is and what the response  
8 is.

9 MR. BUNTING: I guess your question is some  
10 things you feel are not appropriate for rulemaking  
11 because it needs to go through the adjudicatory process  
12 of the hearing.

13 MR. DAVENPORT: Correct.

14 MR. BUNTING: As I mentioned this morning, John  
15 is looking at a way to come up with a process of coming  
16 up with a technical consensus where he would be confident  
17 in presenting his defense for a particular position  
18 somewhere in some form before the license application  
19 time clock starts.

20 We have mentioned there are two possible ways in  
21 which that could be done. One would be in rulemaking.  
22 Another one could be an early convening of the hearing  
23 board, which would be limited to just that particular  
24 question. And you would have your opportunity for your  
25 day in court at that time. The question is we have made

1 no decisions at this time about what would be appropriate  
2 to take to this final formal closure. We do have some  
3 candidate things. The ones we are thinking about are the  
4 performance measures that are in 10 CFR 60, but we  
5 haven't decided whether we can get there or not, nor  
6 which would be the appropriate way to do it. And that is  
7 where we would be looking for input from you of what  
8 would be the most appropriate way on some of these things  
9 to go.

10 But the notion is you are going to have to get  
11 there sooner or later. And if we can't reach agreement  
12 on methodology or how you are going to prove a point,  
13 then I don't know how you can have confidence when the  
14 site characterization program is complete that you have  
15 got the data in hand to prove anything. And that is  
16 where we are trying to come out at.

17 MR. DAVENPORT: A very good point. We are both  
18 headed toward the ultimate question of how do you inform  
19 the licensing board with the adequate amount of  
20 information so they can either give a red light or a  
21 green light?

22 The point that I am trying to get to is avoiding  
23 the situation where the Department of Energy is in the  
24 position of thinking that all they to do is meet the  
25 procedures of the rules and there is an automatic green

1 light, and that we have to know that the ultimate  
2 decisions of law in fact in this proceeding are going to  
3 be by the licensing board, and that there is a red-light  
4 green-light at that point, and that some of these issues  
5 cannot be resolved, even knowing how you prove that the  
6 standard is met, may not get to be resolved until the  
7 final proceeding, wherein you put two methods of proving  
8 the facts before those adjudicators, and they say, "We  
9 like the state's method of proving it better than we like  
10 the department's method of proving it." And therefore,  
11 had you come up with a rulemaking in advance and said  
12 "The way you prove this is by this system," foreclosing  
13 that and essentially giving a green light always to the  
14 Department of Energy.

15           So I am not condemning the rulemaking process  
16 across the board. I am saying that we have to make sure  
17 that some of these ultimate issues, particularly as they  
18 relate to the ultimate standard of giving that license,  
19 are left to the adjudicator of the proceeding.

20           MR. BUNTING: Yes. I hope we didn't convey the  
21 opposite impression. Because we always had envisioned  
22 that even if the states and the tribes could agree on the  
23 proper way to do that, there may always be different  
24 interpretations of what that data that comes back from  
25 that specific site and those specific tests really mean.

1 And that would be the thing on which the board would  
2 focus.

3           There is also the distinct possibility, as you  
4 mentioned, that after we have either gone through a  
5 hearing early on or a rulemaking early on, and people go  
6 out and they really begin to get this data, fill out that  
7 process, we may discover things and be smarter and find  
8 there is a better way to prove it. All we have is a  
9 tougher burden to convince the Board, then, that this is  
10 a better approach.

11           MS. KANY: Judy Kany of Maine. I guess I was  
12 just thinking, as you were speaking about that, that  
13 perhaps a more appropriate role for you people would be  
14 to require, let's say in rulemaking or whatever, that  
15 there be independent assessments -- let's say the  
16 National Academy of Sciences or whatever, and that that  
17 could be your role. As opposed to arriving at an  
18 appropriate methodology, perhaps it would be more  
19 appropriate for you to arrive at what independent  
20 assessments are necessary or lets say what the states'  
21 role could be, what they could do during site character-  
22 ization, for instance. I wonder if you would respond to  
23 that.

24           MR. BUNTING: I don't disagree with you at all.  
25 The trust of what we are trying to do is to make sure

31  
1 that when these considerable sums of money are spent  
2 doing the site characterization program and their rate-  
3 payer funds, that they do produce meaningful data, that  
4 they do fit into a well-thought-out plan for how you are  
5 going to prove a finding. We would like not to have all  
6 of this money spent, and then begin to argue about have  
7 we collected the right kind of data at all. We would  
8 like to have that discussion, to the extent we can,  
9 before that money is spent. That is what we are trying  
10 to get at.

11 And we would certainly be interested in  
12 anybody's views at that time. What we are looking for is  
13 a process to bring those view forward, so there can be an  
14 open exchange of that before the hearing, not during the  
15 hearing after the data has been collected by some process  
16 that no one really agreed to.

17 And it is important here, again, to recognize  
18 that in the Commission there is the staff and there is  
19 the Commission and there is the board. The mere fact  
20 that our technical staff agrees with DOE's technical  
21 staff and agrees with the state just has no bearing at  
22 all on the licensing board, unless you go through some of  
23 these formal processes that we are talking about. And it  
24 could very well be misleading if there is an agreement  
25 between NRC technical staff and the DOE technical staff

1 on a particular process.

2           What we are trying to do is once we feel  
3 comfortable that we know what we are doing, to take that  
4 beyond and get an endorsement from the Commission and the  
5 public and legitimize that process for the hearing.

6           MR. CAMERON: I just wanted to add that in terms  
7 of any contractor work that we do or any of the positions  
8 that we develop, we do subject that to peer review,  
9 including review by the advisory committee on reactor  
10 safeguards. And we feel that is very important. But we  
11 do, as the Commission, have the responsibility to make  
12 those health and safety determinations. And ultimately  
13 that is what we have to do.

14           MR. PROVOST: I am Don Provost, State of  
15 Washington. I would like to make a comment, one, on the  
16 participation of states and tribes, and then ask my  
17 question about resolving one of these issues about data.

18           We recognize that our participation has been  
19 spotty. But, again, with limited staffs and a  
20 proliferation of meetings, you just can't cover them. We  
21 have had this recently, especially meetings that are  
22 going on at the same time. In our case, next week is an  
23 example. Again, we have a meeting on environmental  
24 coordination and also on the detail of the SCP in  
25 Washington, D.C. at exactly the same time. And I am the

1 look at the comments we provided to the Department of  
2 Energy on the headquarters QA plan where we address the  
3 issues you have addressed about where QA reports in the  
4 organization, the number of people, staffing, and things  
5 of this nature, that there is an ongoing interaction  
6 where these have been identified as issues. I agree they  
7 were identified several years back. But I don't think  
8 there was any progress for a number of years.

9 MR. PROVOST: I attended a meeting in San Diego,  
10 and I attended a meeting last week, and if I were to  
11 paraphrase DOE, "If you understood what we are doing, you  
12 would buy our position." They are still going down the  
13 same road that they always have. They haven't changed  
14 one bit. The issue hasn't been addressed.

15 MR. LINEHAN: I am not saying it is near being  
16 resolved. I think if you look at some of the things that  
17 have gone on recently, the stop-work order at the USGS  
18 pertaining to the Nevada project, if you look at some of  
19 the audit reports that are coming out of the various  
20 sites, what I see is there is a much more aggressive  
21 stance being taken by DOE to identify what these problems  
22 are, and to lay out for the record that they need to be  
23 handled by the different contractors. Again, I think  
24 there is a ways to go there.

25 MR. PROVOST: What about the philosophical

1 differences between NRC and USDOE on the organization at  
2 headquarters?

3 MR. LINEHAN: I am not that familiar with what  
4 they are. As I understand it, I don't think there is a  
5 major philosophical difference. I mean, I can't answer  
6 you.

7 MR. PROVOST: Do you mean levels of management,  
8 where there are key waves of management, and the type of  
9 matrix management that DOE has in headquarters? That has  
10 been an issue for a long time.

11 MR. BUNTING: We can echo everything you have  
12 said in terms of problems that you have identified. All  
13 I can tell you is that they are a matter of discussion  
14 between the two headquarters. I know John Davis and all  
15 of his talks have again emphasized the importance of  
16 getting this resolved. He has said over and over again  
17 to Mr. Rushe(ph) and the DOE that not only must the  
18 program be run correctly, but it must have the pedigree  
19 of all the data. And we are going to be very, very  
20 concerned if that pedigree and the system to make that  
21 pedigree is not in place before the data has actually  
22 begun to be taken.

23 My understanding is that DOE has asked that we  
24 look at their QA program and give them comments, and  
25 pretty much either agree or disagree with what they are

56  
1 proposing to do, before they actually begin to undertake  
2 site characterization. Now what DOE is going to do  
3 between now and then to get it in place, I can't tell you.

4 MR. PROVOST: On federal sites especially, site  
5 characterization is under way. This is an ongoing thing  
6 that just clouds more data and more data as it goes on.

7 MR. BUNTING: I understand, and we are very  
8 sympathetic. I can't, I don't think, give you a very  
9 satisfactory answer that would make you feel warm and  
10 comfortable, except to say that before the formal site  
11 characterization program begins, they will be hearing  
12 from NRC on what we think of their program.

13 MR. TOUSLEY: Dean Tousley, Yakima Nation.  
14 John, do you mean on that viewgraph that you consider  
15 issues which are most contentious to be appropriate for  
16 rulemaking? That seems almost backwards to me,  
17 legislative solutions to really contentious issues are  
18 less likely to satisfy the aggrieved parties.

19 MR. LINEHAN: What we are looking at is issues  
20 where there is quite a bit of differing opinion, issues  
21 that need to be resolved for the program to proceed.  
22 Issues may be more related to different methodologies to  
23 be followed, not the final answers to is DOE showing  
24 compliance with Part 60 in a particular area.

25 As we lay out the approach for what is going to

1 be needed to make any of these findings, what DOE is  
2 going to have to do, what NRC is going to have to be in a  
3 position to determine is that DOE meets the regulation or  
4 not. Very often before DOE can collect data, before they  
5 can go into various phases of the program, there has got  
6 to be some agreement early on as to what is necessary,  
7 what methodology needs to be followed.

8           If there is a lot of disagreement on that, we  
9 don't want to be in a position where DOE goes off,  
10 generates a lot of data, without having some firm  
11 baseline on what is necessary. We don't want them going  
12 out there and just doing work and work and work and never  
13 being able to satisfy all of these different opinions  
14 that exist. And it is to try to resolve some of those  
15 early on.

16           I think the think on the implementation of the  
17 EPA standard is probably the best example we have that  
18 trying to lay out a basic methodology for what is going  
19 to be necessary to show compliance with that standard,  
20 rather than having DOE go out and generate tremendous  
21 amounts of data at a tremendous expense and then finding  
22 out that no one is satisfied, that you need a different  
23 type of data. You need a different approach. It is to  
24 focus in on the basic methodology that needs to be used  
25

1 to show compliance with the standards.

2           Again, it is not going to answer all of the  
3 issues, all of the questions that come up once you start  
4 generating this data, once you gather this data. But it  
5 is at some point in the program to try to fix things and  
6 move ahead.

7           MR. TOUSLEY: So you don't mean necessarily  
8 issues that it takes the most work to resolve, when you  
9 say "most contentious," just issues that it takes early  
10 work to work toward resolution?

11           MR. LINEHAN: Yes, it is a combination.

12           MR. FRISHMAN: Steve Frishman, Texas. I have a  
13 few points.

14           First of all, it seems to me that you are very,  
15 very close to that line of prescription, and close to the  
16 point where I am hearing that you think by the talk that  
17 goes on between the NRC staff, the Department of Energy  
18 staff, states and tribes as they are involved, that it is  
19 all right to have prescription if it is consensus  
20 prescription. That seems to be what I am hearing.

21           That that is right back to the issue that Jim  
22 Davenport raised. And that is that whether everybody  
23 agrees or not on the front end does not mean that it goes  
24 into licensing as agreed. And it seems to me that what  
25 you are trying to do is foreclose issues as early as

1 possible -- rather than resolve, foreclose. And I am  
2 very concerning about that.

3 I will tell you why I am most concerned about  
4 it, aside from the fact that I think that it does some  
5 violence to what little faith we may have and hopefully  
6 generate more in whatever licensing process is finally  
7 going to be followed in this situation.

8 Now, throughout your presentation -- I realize  
9 you haven't quite finished, but I am going to jump ahead,  
10 because I see on the next page we are just about there,  
11 anyway. Throughout your presentation, it seems to me  
12 that you are defying existing reality. And that is that  
13 I have just finished looking fairly carefully at such  
14 things as the headquarters SCP management plan. Project  
15 office is working on SCP management plans. I don't see a  
16 connection between your last 45-minutes of talk and what  
17 I read in those documents. I don't even see a connection  
18 between the intent that you have and the intent that is  
19 shown in those documents. Now, where is this all going  
20 to come together?

21 And let me give you the down-to-earth  
22 situation. On the salt site, wherever it may be, the  
23 Department of Energy is going to be out there drilling  
24 holes, collecting data before there is an SCP. The SCP,  
25 as it is presented to me right now by Columbus, is the

1 rationale document for about four to five layers of  
2 various plans, various named plans. They are coming up  
3 with acronyms that you wouldn't even believe. But there  
4 are four or five layers of them. Those are going to be  
5 implemented before any of us know what a full SCP looks  
6 like. And the SCP is not going to be the document.

7           The SCP is going to be one of a number of  
8 documents, and it does not stand independently. It is  
9 dependent upon everything else that is generated beneath  
10 it. And a good part of that is going to be off and  
11 running. The only reason that the shaft is not going to  
12 start is by law they can't start it until they hold an  
13 SCP hearing. They would do that too, if they could.

14           So it seems to me that you are hanging all of  
15 your approach to how we all going to do this together on  
16 a non existent practical application as we see printed by  
17 DOE right now.

18           MR. LINEHAN: I appreciate what you are saying,  
19 Steve, about the current status of the program and where  
20 we stand. I think if you look at the comments we have  
21 been making to DOE over the past couple of years, about  
22 the need for DOE when I talk about laying out their  
23 milestones and schedules, let us know what all these  
24 various plans are that fall below the SCP, what they are  
25 going to be doing at the various sites, getting with us,

1 consulting with us as they develop those plans, not  
2 waiting for everything to be formalized in the SCP.

3           If you look at the PDS comments, the message we  
4 sent back there was that unless DOE gets to us early on  
5 as they develop these plans, we are not going to be in a  
6 position to give them early feedback. We are not going  
7 to be in a position when the SCP comes in to do a review  
8 within the five to six-month period that we are calling  
9 for right now. We need to start working with them from  
10 day one as they go through these various layers, develop  
11 their strategies for different types of testing.

12           I think this is consistent with the proactive  
13 approach we are trying to lay out. It is going to  
14 require a modification to the program that way we  
15 interact with DOE. Some of the sites are telling me that.  
16 they would like to have us review different draft  
17 versions of SCP chapters. I am not concerned about what  
18 is in a particular chapter in the SCP. I am concerned  
19 with what underlies it, what is behind the strategy, what  
20 is behind the testing program laid out in that chapter.

21           MR. FRISHMAN: That is exactly my concern. And  
22 if I can translate my question down to just a real simple  
23 one, how do you plan to deal with an inverted pyramid of  
24 implementation through rationale? Because that is  
25 exactly what exists right now, and that is what the plan

1 is -- an inverted pyramid. The rationale will come  
2 after the test.

3 MR. LINEHAN: I think we have already started  
4 dealing with it. I know a lot of you are not familiar  
5 with the meeting I referred to that occurred at the BWIP  
6 site in December on hydrologic testing. But one of the  
7 basic conclusions that came out of that meeting was that  
8 DOE was proposing to go ahead with some hydrologic  
9 testing. I believe it was in January or February of this  
10 year. And the results of the meeting were that, number  
11 one, they weren't consistent with the site technical  
12 position that had been agreed on by the DOE and NRC.

13 But number two, more important, there wasn't a  
14 rationale for the proposed testing that they were going  
15 to enter into. And I think we have started recognizing  
16 the importance for focusing these meetings on looking at  
17 what the rationale is behind anything that they are  
18 proposing to do.

19 I think there is a ways to go here. It is  
20 something we are just starting. I think we are changing  
21 the types of meetings we have with the Department.

22 MR. PRISHMAN: Let me just give one more  
23 warning. And that is when I asked DCE these questions,  
24 they put heavy reliance on Chapter 4 of the EA, saying,  
25 "That is the plan for site characterization."

1           Have you finally come to a conclusion that you  
2 are going to do a formal review of the final EA? And  
3 second, based on what we saw of the draft EA, do you see  
4 that as being sufficient rationale to correctly spin this  
5 pyramid a hundred and eighty? Do you think that that is  
6 good enough?

7           MR. LINEHAN: We are going to be doing a review  
8 of the final EA's, yes. As far as Chapter 4 of the final  
9 EA's or of the draft EA's as we know it, that is not good  
10 enough. There is still a lot of work that has to be  
11 done. I think that is the message we have been sending  
12 to DOE. And I think the response that we get from DOE is  
13 that there is a significant amount that needs to be  
14 done. I have never heard DOE pushing Chapter 4.

15           MR. BUNTING: I can't address Chapter 4  
16 specifically, but we are doing a review of the EA. And  
17 we will be advising the Commission on what we think the  
18 Commission should be concerned about, because it is a  
19 final document. We have concluded it isn't appropriate  
20 to fire off comments necessarily right straight to DOE.  
21 But we will give the Commission the option to do that.

22           I don't know, but I think I may have heard you  
23 say something. I am a little bit -- I don't know whether  
24 to be disturbed or not, but let me try it out. It seems  
25 like the alternative to what we have laid out here is to

1 do nothing and let DOE rush out and do whatever they want  
2 to do, or whatever the staff and DOE somehow or another  
3 agree to do, and not reach any real conclusions on what  
4 are the residual issues involved in that approach.

5           What we have laid out here quite clearly is an  
6 attempt to try and get some of these issues out of the  
7 way before the money is spent. Because there is not an  
8 endless pot of money. If you have to go back and do it  
9 again it is coming out of the rate-payer's pocket. So we  
10 are trying to be sensitive to that.

11           And yes, in a certain way we are trying to get  
12 you, the states, we, the NRC, and DOE to say that based  
13 on what we know now this is the appropriate way, we  
14 think, to prove this issue. And we would like to get  
15 some kind of a record as to what everybody thinks at that  
16 time. We realize this is a first-of-a-kind undertaking.  
17 When the data comes in it may show that approach wasn't  
18 worth a tinkers' dam. That is a possibility. It may  
19 show that there is a much better way, and somebody will  
20 have to prove that is a better way. It may be us, it may  
21 be DOE, it may be you. But we are trying to get some  
22 order to this very confused process and let people have a  
23 chance to say what their issues are about any particular  
24 approach before the money or the bulk of the money is  
25 spent. This isn't a cure-all for everything. It is an

1 approach to try to work it that way.

2 MR. FRISHMAN: I appreciate what you are  
3 saying. I don't want to waste money here either. I  
4 guess what I am really questioning is, first of all, I am  
5 trying to, I guess, by the intensity of the questions  
6 here, what I am trying to do is get you as scared as we  
7 are.

8 MR. BUNTING: We are.

9 MR. FRISHMAN: And second, maybe there is some  
10 value in what you point out as being the only  
11 alternative, and that is let DOE fall in a hole. DOE has  
12 gotten to where they are by continually insisting that  
13 they recognize they are proceeding at risk. And they are  
14 still at risk.

15 I am not sure that it is really the  
16 responsibility of the NRC to try to mitigate that risk if  
17 it is a one-way street. Because I don't see on DOE's  
18 side that they have been listening very carefully to the  
19 kinds of things you have been saying. And I agree with  
20 the kinds of things you have been putting on paper,  
21 because we have put many of the same things on paper. In  
22 fact, we have adopted formally some of the things you  
23 have put on paper.

24 I am not sure that your responsibility goes all  
25 the way to putting the rate-payers' money out in front of

1 DOE's incompetence at this point.

2 MR. BUNTING: I think we do have a statutory  
3 responsibility to build a record. When we go to hearing,  
4 the burden is going to fall on us to either prove why the  
5 application is acceptable or not acceptable. And we feel  
6 like we need to start developing that record now by  
7 laying out our concerns, by laying out your concerns, by  
8 giving the guidance to DOE and saying "This is an  
9 acceptable way to do this."

10 Once we say that, however, anyone can come in  
11 and prove a different approach. The only burden is it  
12 will take more time. That is fine. But we feel like we  
13 have a responsibility to try to bring some order to this  
14 process and not let everything be unresolved and not try  
15 to reach any closure until that application falls in the  
16 door. Because once it does, the whole burden of this  
17 program falls on the Nuclear Regulatory Commission to go  
18 or no go.

19 And I think that we have to lay out our concerns  
20 way beyond that. We have to be in a position that we can  
21 do a good review of the application and decide whether or  
22 not the application is complete and responsive. If we  
23 don't lay out some criteria before hand, we have no basis  
24 to do that. We don't want the clock running on us, if it  
25 shouldn't be running on us.

1 MR. CAMERON: I just wanted to clarify one thing  
2 so there is no confusion. Although we do have the  
3 responsibility to make a licensing decision, the burden  
4 of demonstrating compliance with our regulations falls on  
5 DOE as the license applicant.

6 MR. DAVENPORT: Well-clarified, counsel. I  
7 wanted to ask a question on the subject that you have  
8 just been talking about. I am Jim Davenport. The statute  
9 provides for site characterization plans to be reviewed  
10 by the agency. And your discussion of closing issues  
11 here hasn't brought into consideration the possibility of  
12 using that instance to, in essence, refuse to give a  
13 go-ahead on the site characterization plan because it  
14 identifies methods of collecting data or proving basic  
15 principles which don't comply with the agency's  
16 expectations about how they should be proved.

17 Are you overlooking the site characterization  
18 plan review as an opportunity to do the same thing that  
19 you are identifying herein possibly by rulemaking? And I  
20 know that the statute does not specify that the  
21 Commission has the authority to disapprove the site  
22 characterization plan, but only to comment on it. I am  
23 aware of that.

24 MR. LINEHAN: No, I think what we are laying out  
25 this afternoon is an addition to what we will be putting

1 in the site characterization analysis that we prepare.  
2 We are not trying to overlook that. But, again, if we  
3 have problems with what DOE is proposing, we would like  
4 to get them out on the table before we review the SCP.  
5 We don't want to go through the time and the effort of  
6 knowing that there is going to be a testing strategy laid  
7 out in the SCP that we don't feel is appropriate. We  
8 want to try to identify that now, identify it early on.

9 But ultimately the site characterization plan,  
10 the analysis that we prepare of it, are one of the key  
11 elements of the program. Probably in going through this  
12 presentation I have under-emphasized the role of the  
13 SCP. But again we see that there is going to be a period  
14 of time where we can address a number of these issues  
15 prior to DOE coming out with the site characterization  
16 plan.

17 Everything is geared towards identifying  
18 problems early on, so they don't proceed down a path  
19 where we are going to be getting a SCP, and we are just  
20 going to be saying, "No way, we don't agree with this."  
21 It just doesn't benefit anyone. But, again, the SCA will  
22 be the formal document that will be used to get that  
23 message across finally, if indeed we have problems with  
24 the SCP.

25 One other thing we are concerned about, we

1 talked about the time and the money being spent. A lot  
2 of this testing, I think it is important to recognize  
3 that DOE is just going to have one shot at it. Some of  
4 these major testing programs, once they do the testing  
5 they are going to perturb the site. There is other  
6 activities that are going to be going on at the site,  
7 such as sinking of the exploratory shaft that will  
8 perturb the natural system. And it is very important, as  
9 early as possible, to identify what these problems are.  
10 There are cases where it may not be possible for them to  
11 go back within any reasonable period of time and repeat  
12 some of the testing, if it isn't done properly the first  
13 time. And that is another key concern that we all have  
14 to be aware of.

15 MR. FRISHMAN: John, let me ask you one  
16 question, and you may not be able to answer it. But what  
17 I would like to hear from you and your staff is some kind  
18 of a commitment that you are not going to come to  
19 resolution on such things as test plans without having  
20 the accompanying SCP rationale so that you can do your  
21 statutory and regulatory duty of reviewing an SCP. Can  
22 we get a commitment like that?

23 MR. LINEHAN: Let me make sure exactly what you  
24 asked me. What we are proposing in these meetings  
25 between now and the SCP and what we are proposing in

1 these technical positions -- I am not sure if your  
2 concern is the fact that the states won't have adequate  
3 involvement in this.

4 MR. FRISHMAN: My concern is that you do your  
5 full job just like we are not going to be able to do our  
6 full job, the way I am reading it right now.

7 MR. LINEHAN: What we will be trying to do is  
8 reach agreements. Those agreements are going to have to  
9 be substantiated by what they put in the SCP. The SCP is  
10 the document that is going to tie it all together.

11 MR. FRISHMAN: The thing that I am getting at is  
12 you, yourself, said that you don't want to look at  
13 piece-by-piece in the SCP two or three review pieces.  
14 Now what I am asking is would you commit in some way to  
15 not giving any kind of a nod to a test plan where you do  
16 not have accompanying SCP rationale so that you can carry  
17 out your regulatory duty?

18 MR. LINEHAN: We are not going to give the nod  
19 to anything unless we have that level of rationale. That  
20 is going to be necessary for us to -- whether it be in a  
21 meeting, whether it be in a technical position, that same  
22 level of rationale is going to have to be available for  
23 us to give a nod to DOE.

24 MR. FRISHMAN: And I don't want to get into the  
25 picking of words, but I will take that as a commitment.

1 We can get much more picky about exactly what you said,  
2 but for purposes right now -- no SCP rationale, no  
3 testing.

4 MR. LINEHAN: If you look at the meeting minutes  
5 on the BWIP hydrology meeting, if you look at the  
6 followup correspondence between the NRC and DOE, it hits  
7 upon that exact point. In other words, there was a  
8 general rationale presented by the Department of Energy.  
9 We need to do certain testing. We need certain  
10 information.

11 It wasn't the level of rationale as to how it  
12 fit into overall characterization of the site. That  
13 wasn't presented. It was recognized by us and DOE that  
14 that was necessary before we could reach any agreement.  
15 And I think that that documentation will give you an  
16 indication of where we are going and what we are going to  
17 require of the department before we bless something.

18 We went into a meeting where DOE was proposing  
19 to start testing in January or February of this year.  
20 The result of the meeting was just to shut off that  
21 testing. It was jointly agreed by us and DOE. And the  
22 whole thing focused on there not being sufficient  
23 rationale. The types of rationale we get after were the  
24 exact types of things that are going to be required in  
25 the SCP, backup for the SCP.

1 MR. FRISHMAN: The only reason that I am seeking  
2 a commitment like that is because, I remind you again,  
3 the SCP management plans don't seem to indicate that the  
4 sequence you see is what DOE has in mind.

5 MR. LINEHAN: One final point. I think this is  
6 something that we should discuss further in the meeting  
7 we are going to be having with DOE on what is going to be  
8 in the SCP. I think we need to get into how all these  
9 interactions prior to the SCP also are going to tie in.

10 MR. CAMERON: In relation to the issue that Jim  
11 Davenport brought up earlier, I am not sure how relevant  
12 this is to that, but in the final procedural amendments  
13 to Part 60 that the Commission will be issuing in the  
14 future, those rules require the NRC to state any specific  
15 objections that we have to DOE's site characterization  
16 plan.

17 MR. LINEHAN: I think we have pretty well gone  
18 over this slide.

19 The final slide here deals with the third goal  
20 that I laid out on the original slide this morning. And  
21 it has to do with development of our independent  
22 technical review capability. This is a critical part of  
23 us developing work plans, laying out what needs to be  
24 done to address any issue to provide timely guidance to  
25 the department and to do what the NRC needs to do at

1 certain phases of the program.

2           What we are going to be doing for the various  
3 issues that we identify is establishing review criteria  
4 and the review approach that we are going to be using.  
5 We are going to be doing this for each compliance  
6 demonstration issue, and as necessary for other generic  
7 issues and other site-specific issues. Hopefully in most  
8 cases we can come up with a basic generic approach, and  
9 then modify it for the various sites that we have to  
10 consider.

11           We are going to have to do this for various  
12 stages of the program. There is going to be various  
13 levels of site data available. The uncertainty is going  
14 to change significantly as we get into the program, as we  
15 go from the SCP to the SCP updates, and finally to the  
16 license application. And what we are going to do is lay  
17 out a strategy that we will follow when we review each  
18 one of these documents as it comes in.

19           For those of you that are familiar with the  
20 modeling strategy document that we issued, I believe it  
21 was in mid or late '84, it is a document that basically  
22 lays out, it spells out, the level of detail, the type of  
23 review we are going to do in each technical area when we  
24 review the license application. As we go through this  
25 process or identifying issues, looking at what is:

1 important to various issues at various phases of the  
2 program, we are going to be developing additional  
3 modeling strategy documents that will address the review  
4 we do at the time of the SCP and the biannual updates on  
5 the SCP that we receive from the Department of Energy.  
6 These documents will be discussed in meetings as we  
7 develop them. They will be available for review and for  
8 comment.

9           What we have seen as looking at the modeling  
10 strategy that we developed for the license application,  
11 the document we put out in 1984, is we feel, again for  
12 those of you that are familiar with it, we need much  
13 greater level of detail spelling out the types of models  
14 we will use, the types of codes we will use, areas where  
15 we will do a totally independent review, do our own  
16 independent modeling effort, areas where we will rely on  
17 verification validation of models that are developed and  
18 used by the Department of Energy. This is going to vary  
19 for the different technical areas. It is going to be a  
20 call we are going to make, based on the complexity of the  
21 issues, areas where we don't necessarily agree with the  
22 particular code and model that is being used by the  
23 Department. And we are going to have to pick and choose  
24 on these.

25           We have always said that we are not going to be

1 able to do a one hundred percent review of every  
2 calculation the Department does. What we are going to do  
3 is we identify issues, try to focus on the most important  
4 things that need to be reviewed so we can make an  
5 independent determination as to whether the DOE is indeed  
6 meeting the regulations when they file the license  
7 application with us.

8           One of the additional things we are going to be  
9 doing as we develop these review approaches and these new  
10 modeling strategies is looking at the contractor work  
11 that we have, the technical assistance work, the research  
12 work, to try to recalibrate, to decide if we are getting  
13 the information that we need through these contracts to  
14 put us in a position to do these independent reviews, or  
15 if we have to modify some of these contracts.

16           Again, on all of these things, just about  
17 everything that we will develop and everything that  
18 exists today, the different statement of works for the  
19 contracts, documents such as the modeling strategy  
20 document, they are all available. And what we are  
21 looking for is any input where you could give us some  
22 constructive feedback as to what we need to do to help  
23 get ourselves in a position where we are ready to review  
24 the application when it comes in in 1991.

25           Everything I have talked about today is in the

1 preliminary stages. We are just starting to come up with  
2 a methodology for implementing the five-year plan. And  
3 we are looking for constructive feedback. It is only  
4 going to work as an open process if we get effective  
5 interaction with all of the parties involved. And any  
6 comments you could give us at the meeting or as a  
7 followup to the meeting would be appreciated.

8 Are there any other questions?

9 MS. RUSSELL: We have sort of two distinctly  
10 different groups here at the meeting today. We have the  
11 people who are involved in the first-round program. And  
12 they are in a very different phase of activities. And  
13 then we have the state and the tribes here from the  
14 second-round program. Rather than making those from the  
15 first round kind of listen to what they have heard on  
16 numerous occasions, we would like to sort of make a  
17 suggestion in terms of a change in the agenda.

18 We would like to, tomorrow morning, if it is  
19 satisfactory with everyone, ask a rep from each of the  
20 states and tribes that are here to come up to the mike  
21 and give us just a real brief overview of where your  
22 program is and what you are doing, and what problems you  
23 might have.

24 Very often we find at these kinds of meetings  
25 that we are always talking about what we are doing, but

1 we don't get a whole lot of feedback from the states and  
2 tribes about what they are doing and where they are in  
3 the process. So that would be very helpful.

4           And then after that, if possible, we would like  
5 to meet with the representatives from the second-round  
6 states and Indian tribes that are here and at least kind  
7 of give you a general overview of our state and tribal  
8 participati program, if that is satisfactory with  
9 everyone.

10           In the first critique I got back of the meeting,  
11 one of the comments was that additional time needed to be  
12 provided for outdoor recreational activities. So in  
13 order to try to accommodate that, I think we probably can  
14 close up now.

15           I want to once again thank you for coming, and I  
16 want to thank you for generously donating your dollars  
17 for the coffee. And we will see you tomorrow morning  
18 about 9:00.

19           (Whereupon, at 4:06 p.m., the meeting was  
20 adjourned.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings  
before the NRC COMMISSION

In the Matter of: STREAMLINING THE LICENSING  
PROCESS and DEMONSTRATING  
THE LICENSING SUPPORT SYSTEM

Date of Proceeding: April 29, 1986

Place of Proceeding: Las Vegas, Nevada

were held as herein appears, and that this is the original  
transcript for the file of the Commission.

Horace W. Briggs  

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Official Reporter - Typed

*H. W. Briggs*  

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Official Reporter - Signature

JUL 7 1986

Docket Nos. 50-277  
50-278

The Honorable William F. Goodling  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Goodling:

We are pleased to respond to your letter dated June 12, 1986 which expressed concerns regarding the NRC's identification of "a serious management deficiency" at the Peach Bottom Atomic Power Station. Your letter inquired as to whether the allegations were substantiated, what we were planning to do and how quickly we could bring about necessary changes.

The information for the newspaper article you cited was based on a Systematic Assessment of Licensee Performance (SALP) Board report dated June 6, 1986. First, it is important to understand the purpose of the SALP program and how it was implemented for Peach Bottom. SALP is an integrated NRC staff effort which, on a periodic basis, takes all available inspection and licensing observations for a fixed time interval, usually 12 to 18 months, and uses them to evaluate licensee performance based on criteria established by NRC procedures. SALP is supplementary to the normal regulatory processes and is intended to be diagnostic, with emphasis on understanding the reasons for licensee performance in important functional areas: e.g., operation, maintenance, radiological controls, etc. Routine inspections were conducted at regular intervals at the Peach Bottom facility but the reports of those inspections generally dealt with observations of work in progress and the quality control systems in place to oversee the work. In this regard, the SALP process is unique in that it also captures our opinions and judgement, based on observation, and attempts to relate these to our understanding of the reasons for the noted performance. That is, the symptoms of either good or poor performance may exist and be seen on a sporadic basis during the course of a year, but the SALP is our opportunity to collect such symptoms and assess management's role in the observed performance. In the case of Peach Bottom, our recent assessment indicated that performance in some functional areas has either deteriorated or shown no improvement over the years. Other areas have shown occasional improvements yet have slipped back to previously poor performance levels. A copy of the current SALP report is enclosed. Notwithstanding the weaknesses noted in this report, the overall performance in nuclear safety at the Peach Bottom Station was found to be acceptable.

The purpose of the SALP is twofold: 1) to better understand the underlying reasons for the plant's performance and to share these insights with licensee management such that they can take appropriate actions to further improve and, 2) to provide a rational basis for allocating NRC inspection resources among NRC licensed facilities such that we can provide more attention to weaker performers and less attention to the better ones. In this regard, to better

understand the underlying reasons for the performance at Peach Bottom, NRC Region I is conducting a special in-depth inspection by a team of experienced inspection specialists and resident inspectors from other sites. This inspection commenced June 18, 1986 and is intended to obtain a more complete understanding of the reasons for the performance described in the SALP report, and to assess licensee corrective action programs. Specifically, the SALP results are focusing our attention in the short term so that we can verify the need for longer term corrective measures. A copy of the inspection report will be forwarded to you when it is completed for your information.

The performance at Peach Bottom during the most recent SALP period indicates shortcomings when compared to that of the overall population of plants licensed by NRC. Similar kinds of problems, however, have been observed at other facilities, both in Region I (northeast United States) and nationally. It is our policy to bring problems identified through the SALP process to the attention of utility management and deal with them before they lead to further degradation of performance. It is this type of aggressive action that highlights to licensees the need for precautionary actions rather than allow events to proceed unchecked.

We have forwarded the SALP Board Report to the licensee and in the near future will meet with them to discuss the issues identified in the SALP report and in our team inspection with Philadelphia Electric Company management. We will solicit from them their views and corrective actions which we will monitor and take appropriate measures to ensure that the desired results are being achieved. Additionally, the poor performance as indicated in the SALP Report and the recent Notice of Violation, with a proposed civil penalty, were of such serious concern to me personally that I have scheduled a separate meeting with the Chief Executive Officer of Pennsylvania Electric Company to address these issues.

Sincerely,

Original signed by  
Victor Stello  
Victor Stello, Jr.  
Executive Director  
for Operations

Enclosure:  
1. SALP Report