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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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NUCLEAR REGULATORY COMMISSION BRIEFING
MEETING WITH ORGANIZATION OF AGREEMENT STATES (OAS)
AND CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS
(CRCPD)

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Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Wednesday

August 21, 2002

The Commission met in open session, pursuant to notice,
Commissioner Richard Meserve, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

- GRETA J. DICUS, Member of the Commission
- NILS J. DIAZ, Member of the Commission
- EDWARD McGAFFIAN, JR., Member of the Commission
- JEFFREY MERRIFIELD, Member of the Commission

1 (This transcript produced from electronic caption media and audio and video
2 media provided by the Nuclear Regulatory Commission.)

3 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

4 KATHY ALLEN, OAS, Chair-Past

5 CYNTHIA CARDWELL, CRCPD Chair

6 RONALD FRAASS, CRCPD Executive Director

7 PEARCE O'KELLEY, OAS, Chair-Elect

8 WILLIAM SINCLAIR, OAS CHAIR

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

2 CHAIRMAN MESERVE: Good afternoon. Why don't we get underway.

3 The Commission meeting this afternoon is to hear from the Organization of
4 Agreement States and the Conference of Radiation Control Program Directors. I
5 would like to welcome Mr. Sinclair, who is the current OAS chair, Pearce O'Kelley,
6 the OAS chair elect, Kathy Allen, who is the OAS chair past, Cynthia Caldwell,
7 who is CRCPD chair, and to Ronald Fraass who is, I believe, the new executive
8 director, we welcome you. I think this is your first time under fire here at a
9 Commission meeting.

10 COMMISSIONER MCGAFFIGAN: I thought you were reading a Christmas
11 Carol by Charles Dickens.

12 CHAIRMAN MESERVE: These are obviously very busy times for both the
13 NRC and for the agreement states and for those states that are not agreement
14 states. There's a huge amount that's been going on. We share many
15 responsibilities.

16 And our cooperative activities are enormously important to us. We have a
17 large number of activities that are underway, various working groups dealing with
18 jurisdiction over Part 40 type materials, revisions of 535, and a large number of
19 other things. And on top of that, we have issues that are related to security that all
20 of us are grappling with.

21 So we very much welcome the opportunity to interact with you
22 today, that we have a situation where, for once, we have regulators on both sides
23 of the table.

1 So good, why don't we get underway.

2 MR. SINCLAIR: Thank you, Mr. Chairman.

3 As I was introduced, I'm Bill Sinclair. I am the current chair of the
4 Organization of Agreement States. I would also like to recognize two other
5 members of our Organization of Agreement States who are with us and are sitting
6 behind us, Stan Fitch from the State of New Mexico is our current secretary, and
7 Ken Weaver from the State of Colorado is our current secretary elect. They are
8 here with us today giving us support. So we are glad to have them with us.

9 We are going to do this briefing a little bit differently, Mr. Chairman.
10 In the past it's kind of been that we have had the OAS brief or the CRCPD brief.
11 But today we are going to do this kind of jointly. And so as we go through these
12 topics, we are going to be moving around from body to body. And hopefully you
13 can recognize that as part of our new coordinated effort to try to use our state
14 resources better.

15 The first topic that I want to mention is that we have spent a lot of time and
16 effort this past year, as state organizations, both Conference of Radiation Control
17 Program Directors, and the Organization of Agreement States, in trying to better
18 coordinate what I would call our mutual and limited resources. Because as we
19 look around the table, at least from the state organization perspective, we like to
20 say we are they.

21 And we have a mutual desire to maximize the sharing of these resources.
22 And so we found out that because of that, there is a definite need for a lot of
23 coordination between the two organizations. And this really, frankly, hasn't

1 happened a lot in the past. And so we spent a considerable amount of time this
2 year in doing those kind of activities.

3 Just to give you some ideas and examples of some of the things we have
4 been doing, we have attended each other's board meetings. I was able to attend
5 the CRCPD board meeting in Wisconsin. Cindy came to the OAS board meeting
6 in Salt Lake City. We have also had what I would call multiple conference calls on
7 a number of topics that are of interest to both the organizations. And we have
8 opened up our organizations so that when we correspond one with another within
9 each organization, such as by e-mail, we share that kind of information. So
10 there's really no surprises in terms of what the organizations are doing.

11 That really is a benefit to us. So we can really try to maximize
12 those limited state resources that we have.

13 I'm going to give some time now over to Cindy, and she is going to
14 further delineate some of the other coordination efforts.

15 MS. CALDWELL: As Bill said, we are definitely actively working on
16 coordination between the two entities. And I believe the actual quote from one of
17 our southern members was, we is us and us is them. There are mutual limited
18 resources that we share.

19 To continue on with the theme Bill started, one of the other things
20 that we are doing, I think, is very important, is we are coordinating solicitation of
21 members for the NRC working groups.

22 When the states are asked to provide a state member to those
23 working groups, typically the request was made to OAS. We might at CRCPD

1 had a committee currently working on it or other entities or involvement or other
2 membership involvement that would have been important to that. And vice versa.
3 So now we are trying to coordinate that effort. We just don't have a lot of people
4 out there, so we want to make the best use of them that we can. So that
5 coordination is going on.

6 Also we, at CRCPD, are now actively participating in the monthly
7 OAS calls that NRC conducts. So that's been very helpful, because that just is
8 one more step in that coordination process.

9 So we are hoping with these efforts, while the lines between the two
10 organizations may seem at times gray and blurry, there are distinct differences
11 between the two. But with the working together and the coordination that goes on,
12 we hope we can improve the use of our people our staff resources, as well as the
13 NRC resource people who work with us, and try to clear up that gray line between
14 the two.

15 I'm going to move on to the next topic now and that is our new
16 executive director at the Conference of Radiation Control Program Directors.
17 Since the creation of this position, which I believe was 21 years ago, we have only
18 had one executive director. Chuck Harbin officially retired this summer. And as of
19 July 31st, Ronald Fraass, who came from the state of Kansas, is our new
20 executive director. And I would like to give him a few moment to say a few words
21 to you.

22 MR. FRAASS: Thank you, Cindy.

1 Mr. Chairman, the staff at the office of executive director really only
2 has one function. We serve our 50 bosses which are the various state programs.
3 But our goal, as it has been in the past, and I will be emphasizing is a partnership
4 dedicated to radiation protection just as you have heard from William Sinclair and
5 from Cynthia, are the things we will be working on.

6 We will be helping increase that partnership with our federal
7 personnel with the other regulated communities, with the other technical experts in
8 the field. Because what we are all facing is a real shortage of qualified technical
9 folks to take these various jobs, whether at the federal level, the state level or in
10 industry. And that's going to be one of the goals we will be working with the health
11 physics society and others, in trying to pursue that goal.

12 MS. CARDWELL: Moving on to the next one. we are going through a
13 series of changes at CRCPD, not just with the new executive director, but the
14 board has taken on several challenges, and we are doing what we are hoping to
15 call new initiatives, new changes. And I want to share several of them with you.

16 Recently, the CRCPD board approved a new initiative. What it
17 does is modify the ways in which our working groups are created and how they
18 function. We have looked at them over time, and they have evolved over time but
19 we took a critical look and evaluated them. A detailed report is on our web site.
20 And I would invite each of you, with all extra time that you have, to go to the web
21 site and look it over, because I think there are some unique ideas there.

22 But in summary, I would like to share with you a few of the things
23 we are doing. Firstly and most obviously, we have eliminated those working

1 groups who serve no purpose anymore. They just have been on the books for a
2 while.

3 We have also designated several of our workings groups as
4 inactive. And while we don't want that to have a negative connotation. What that
5 means is that the topic of the committee serves as a placeholder, but we don't
6 have any standing members, because if there are standing members on that
7 committee, it doesn't have a product to develop at the time, according to our
8 policies, they are not free to serve on other committees. So it ties up people in an
9 artificial way. So we have done that.

10 The suggested state regulation working groups are probably the
11 best example of this, where we have a committee for each one of the SSR parts.
12 And those will be inactive until there is some rule revision identified that needs to
13 be done. Again, hopefully, that will make the best use of our resources.

14 Following right along with that, what we plan to do is for every
15 single charge to our committees in which this can be done, we will put a time
16 frame on there. Now that may seem like something that should have been
17 obviously done in the past, but it wasn't done consistently across the board. So
18 we are making a concentrated effort to do that.

19 And what obviously we hope that accomplishes is timeliness in
20 getting those products out. Again, I will use the SSR as group as an example.
21 They are not very useful to the agreement states or to the other states who use
22 them, if they are not done in a timely fashion. So we are hoping to really correct
23 that.

1 Again, we will be soliciting members for our working groups much
2 the same way that OAS has historically done. And we are using the ASTWO
3 model as well, Association State and Territorial Waste Management Officials, I
4 believe, is what that acronym stands for, in which when a product is identified, and
5 if we identify that we need a publication or a guidance document, some kind of
6 direction, we will go out, via e-mail, and solicit members.

7 Hopefully this way, we are getting the people who have the interest, who
8 have the current experience, and who have the time to commit to it, so that we get
9 someone who can get in there and get the job done in a quicker fashion than what
10 we have done in the past. So we are hoping that works as well in accomplishing
11 some of these efficiencies. Again, that includes federal resource persons, our
12 NRC staff who also voluntarily work on our working groups.

13 The second initiative which is related but is definitely separate, we
14 have had a working group, again, critically evaluating the suggested state
15 regulation process. Historically, CRCPD has been very proud of the fact that the
16 SSR's are products that the states use. We have considered it one of our best
17 products that we put out.

18 In recent year, I think everyone experiences this with the time
19 crunches, they have just not been getting out in a timely manner. And that's of
20 real concern to us. Not only are we making these changes with the working
21 groups themselves and how they function, but with looking at the SSR
22 development process, how long it takes, where we could possibly streamline that,

1 and what we could do differently that maybe doesn't need to be done but has just
2 been done because.

3 That working group has a report that is due to our board this fall. I have
4 seen the draft. It has some really good suggestions, a lot of which compliment the
5 changes we are making in the working group initiative. One of the things it does is
6 strongly encourage the parallel rule making process by working with the federal
7 agencies even more closely than we do, in particular, NRC.

8 It suggests and recommends that we coordinate with OAS in order to
9 nominate the appropriate person to work on an NRC working group if there's one
10 that's going to lead to rule making, which will, in turn, lead to development of a
11 suggested state reg. So that was an efficient one, I thought.

12 We will also -- the committee encourages, again, cooperation as early as
13 possible with the federal agencies. And that includes, obviously, NRC. And so
14 the board itself, I think, is going to be encouraged by the discussions that have
15 recently been held with state programs and NMSS about ways to improve rule
16 making on the federal level, NRC in particular, and how we can mesh these two
17 initiatives together and make them work so that we can get that done more
18 efficiently.

19 And with that, I'm going to turn it over to Kathy.

20 MS. ALLEN: One of the initiatives that we came up with on the national
21 materials program working group was the idea of a standing compatibility
22 committee. The idea of this standing capability committee was an independent
23 group of state and federal people that look at regulations as they are developed to

1 ensure consistent application of the compatibility criteria. So it shouldn't matter
2 whether NRC has the lead in writing the rule or whether the states take the lead in
3 writing a rule, there would be an independent group that would verify the original
4 writer's first cut attempts at establishing compatibility levels.

5 Currently, when someone writes a rule -- I know when I write a rule, I kind of
6 think it's all important. So if I was writing a rule, I would only put important things
7 in there. Therefore, they would all be compatibility A, otherwise I would never
8 write something in there. So the idea would be to take this back a step back and
9 have an independent group look at it to say, well, it's really important but maybe
10 it's more health and safety rather compatibility A. Or maybe it's a B. Or really,
11 gee, Kathy, maybe it's nice, but it's really not as important as you thought it was.

12 So there's an independent group that would then look at these rules
13 to come up with compatibility determinations for rules before they are moved
14 forward in the proposed stage. So that from rule to rule, whether it's well logging,
15 medical, radiography, that there's a consistent application of that compatibility
16 policy before it goes up to the Commission -- and this would be a group that would
17 sort of recommend that.

18 Currently, there are three of us, Jake Jacoby, myself, and Duncan White
19 from Region I that are working on a draft charter for a group like this, trying to
20 identify the role, responsibilities, how it would work, how it would interface. And
21 we are trying to work through some of these issues. And we hope to have a
22 report by the beginning of October, at least a status report on what we have sort

1 of decided on the best approach for a standing compatibility committee at that
2 time.

3 That was just one of the things that came out of the national materials
4 program working group report.

5 Another thing that was discussed was, where do we go from here, where do
6 we go forward, what's the next step on a national basis? And the group
7 recommended an alliance option.

8 And I see, hot off the presses, there's a SECY document that we were just
9 handed. And it says that, you guys, the Commission, would be interested in
10 moving forward on a combination alliance and current program structure for the
11 future.

12 Take a look at this. There has been some pilot programs developed that
13 we -- Cindy and I have worked with NRC, you know, from CRCPD and OAS. Let's
14 go forward on some pilot programs and see how we can actually integrate the
15 organizations together to make the most effective use of our time and effort.

16 So, we are happy to see this. We think that this is a good step.
17 The pilot projects look pretty good.

18 One of that biggest problems with coming together nationally is
19 determining the priorities for these things. Our priorities are changing weekly,
20 monthly, sometimes daily.

21 One of the goals that we hope to get to is eventually figure out a
22 mechanism so that the NRC and the states can somehow come to consensus on

1 priority issues and put most of our efforts that way. So you can plan for the future.

2 We knew that we needed to change the medical rules. I think there
3 is a lot of coordination, that the NRC got the states involved pretty early in the
4 medical rules, the parallel process for rule making and everything.

5 We need to figure out what other rules are coming down the line that we
6 need to plan for, maybe next year, the year after, so that we can start setting
7 aside things or get people starting to working on these things, so that when it
8 comes time for them to surface to the top of the priority list, we have got resources
9 and people ready to roll into that particular program.

10 I think that's the biggest challenge, is figuring out where do we nationally
11 and what's important to the states. What's important to me is not going to be
12 important to Pearce, because we are in two different states.

13 Well, maybe. I think that's our biggest challenge right now, figuring that
14 stuff out. But I think, using the pilots, it helps create a dialogue in a situation
15 where we are ready to start working together and we can throw off some of the
16 turf stuff and some of the baggage that that comes with calling the party line or
17 whatever. Basically, we need to get to the point where we say, we agree, this
18 needs to be done, let's figure out the best way to do it. And I think many of the
19 pilots, and many of the things we have actually worked on over that past have
20 really worked out well.

21 I know I have been involved in a lot of joint efforts and for the most
22 part, it's been very productive, working with NRC staffs. And they are surprised

1 that people in the states know things. We are surprised that NRC has all of these
2 extra people that that know stuff, too. It's kind of nice to pull them out and pull
3 some of these things out and get them together and make them work -- you know,
4 have them work together on things.

5 It's very productive and it's quite helpful for us to learn from you guys. We
6 would like to believe it works the other way too. So I'm going to have Cindy talk
7 about one of the pilots in particular.

8 MS. CARDWELL: This pilot in particular is the one on industrial
9 radiography certification, a topic near and dear to my heart.

10 One of the pilots calls for the agreement states taking the lead in
11 approving, certifying entity, whether it be a state or another organization,
12 independent nonregulatory organization, to be a certifying entity of industrial
13 radiographers.

14 One of the reasons we quickly agreed to take on this pilot is
15 because we have essentially done this to a great extent. The CRCPD board did
16 approve serving as the lead organization in taking on this pilot. We are actually
17 doing it through our committee on industrial radiography certification. That
18 committee, whose chair happens to be on my staff, has the office next door. So
19 we have already drafted the charter, and we will be, at this point, going through
20 the review process of the board and the other committee members of that
21 particular committee. But we anticipate that they will not have a problem with that,
22 and we will improve the charter and be able to implement that charter and do the

1 lessons learned evaluation within the time frame, I believe December 2003 is what
2 they put in the draft charter.

3 So we are hoping that proves to be a success and the win/win for
4 all of us.

5 MS. ALLEN: That was the pilot program assigned to CRCPD. The one
6 assigned to the Organization of Agreement States is a little fuzzier at this point.

7 We were tagged with the task of coming up with the charter for a
8 new, emerging technology. So we are anxiously awaiting for that technology to
9 emerge. And as soon as it does, we're on it. We will be there and we will be
10 ready to roll.

11 Bill has created sort of an outline and an approach for this. We will be
12 discussing it at the Organization of Agreement States meeting coming up in
13 October and will be trying to come up with some modality, some type of
14 technology that might be emerging in a particular state where they may believe
15 they have the ability to handle this. But maybe that don't realize this is ready to go
16 national, and maybe there's a reason to come up with guidance, because it's
17 going beyond their particular state.

18 So we will try and poll the states and the NRC regions. Everybody, if there's
19 something going on out there that we would like to have some sort of guidance or
20 licensing criteria, questions, maybe a possible rule making fix, inspection
21 procedures, whatever is necessary to handle this new, emerging technology, the
22 idea would be to see how quickly we can get our hands around it, identify the
23 issues, evaluate them, and come up with whatever is necessary to help write the

1 programs. And then implement that or have the guidance available for the
2 different programs to implement.

3 So at this point we are sort of pleased waiting for the technology to
4 emerge, and we are ready to hopefully pounce. If nothing comes up in October,
5 we will be back at May at the CRCPD meeting asking the same questions and we
6 will be sort of monitoring discussion groups, e-mails, phone calls from different
7 people hoping that if something comes up, we can move on it quickly.

8 So from this issue, now I am going to fly it over to Ron for KI.

9 MR. FRAASS: I was asked to address potassium iodine issue, because
10 about a year ago I was still chair of the E6 committee on emergency response
11 planning for CRCPD.

12 At our board meeting in 2001, the Conference of Radiation Control Program
13 Directors rescinded its earlier resolution on potassium iodine. We wanted to look
14 at what had happened in Chernobyl. We wanted to look at the NRC's initiatives,
15 the Federal Emergency Management Agency initiatives and decide what new
16 direction to go on the potassium iodine issue. We know you folks wrestled with
17 that a great deal yourselves.

18 At the 2002 meeting, instead of a board resolution, CRCPD passed a
19 membership resolution that requires a majority vote of all the director members to
20 pass such a resolution. Basically, we went with similar language to what the
21 Nuclear Regulatory Commission used, in that we felt that each state and local
22 jurisdiction should consider the use of KI as a prophylactic for the general public in
23 the event of large releases of radioactive iodine that may require protective action.

1 You notice we did not put in specific words only pointing to nuclear
2 power plants. Many of the states for years have had that process in place. We
3 have had it in place for the use of potassium iodine and for our emergency
4 workers and for certain populations that are not easily mobile.

5 We felt there were at least a few potential incidents where other
6 situations could arise that would release significant quantities of radioactive iodine
7 into the environment, probably not so much for the public, but at least for the
8 emergency workers who might have to respond.

9 A couple of pieces that we put in the proposal is we felt there
10 needed a public and medical potassium iodine education program plan to help the
11 public, to help the medical community, the various responders and decision
12 makers understand better how to properly use and when to recommend the use of
13 potassium iodine. We were concerned that people need to be cautioned about
14 unnecessary or inappropriate use of the drug.

15 There were anecdotal pieces of information provided that following the
16 incident in Japan, that people over in California were buying iodine water
17 purification tablets and taking them to protect themselves from a potential plume
18 coming across the ocean. We need to make sure that the public is better
19 educated than that, so we are not putting people at risk.

20 If you talk to the folks over in the area around Chernobyl, you will learn that
21 many parents gave their children the tincture iodine in order to protect them.
22 Again, a very dangerous process. It was fortunate that at least we have heard no
23 problems from that, but the public needs to be helped in that.

1 Part of the additional thing is the concept that we are asking the federal
2 government, and NRC would certainly be a portion of that, to help the state and
3 local jurisdiction in developing and maintaining a continuing program to provide KI
4 to the public, as opposed to just an initial program.

5 And the final area, we are looking at and asking FDA, and perhaps
6 some additional encouragement from the NRC would assist that, that the Food
7 and Drug Administration expedite the approval of doses smaller than 130
8 milligram tablets, because the FDA recommendations go down as low as an
9 eighth of a pill, which is a 16 milligram tablet. There is some information out there
10 for using liquid doses. That's available.

11 At the most recent meeting of the federal radiology for protection
12 coordinating committee on the 30th of July, a member of the public came and
13 spoke on potassium iodate, KIO₃. It was suggested that that also be looked at.
14 There is literature out there that says it is perhaps as effective and may have
15 fewer taste problems.

16 If you look at the literature from Chernobyl, a lot the negative
17 reactions of the members of the public who were given pretty much in many cases
18 a liquid dose, is simply they responded to the really bad taste of the iodine. It's
19 apparently somewhat more disguised in the potassium iodate. So, that was
20 brought up at the FRPCC as a potential recommendation.

21 MR. O'KELLEY: Good afternoon. I guess it's my turn. I know we had on
22 the agenda homeland security. I just want to mention some brief things that make
23 everyone aware that the states are already doing a lot in this area. We are

1 working with our local and state agencies to get them up to speed to participate in
2 any plannings for the dirty bombs and other nuclear and radiological issues.

3 In that vein, we will also be some of the first ones to actually do any
4 response should an incident occur. In this area, what we are requesting and hope
5 that the NRC will let us do is at least be a full partner in discussions on any policy
6 settings in this area and be able to provide you with the local and state respective,
7 which is where the action is going to be, should something happen. We just want
8 to be there and help you out and work together on that issue.

9 Another issue that most of the states are facing right now is the loss of
10 experienced personnel through retirement. We have seen the loss of a lot of
11 program directors in the last two years. Not only with program directors, we have
12 also see the loss of a lot of our more experienced technical staff.

13 The problem that's causing for us, and eventually to a lot of our licensees, is
14 that we are losing the experience. Along with losing staff, we are also losing
15 funds.

16 The states have been hit a lot harder than the federal government has with
17 the economy. And it has impacted us tremendously. Personally, my program is
18 now 25 percent in a year, and looking at another 5 percent in November.

19 With these loss of personnel, we are going to have to hire new personnel.
20 And the training and funds available for training are going to be very critical for us
21 to continue to maintain our agreements in the manner that has we have been able
22 to so far.

1 So we request, ask, urge, beg that if anything can be done to
2 provide some additional training resources from the federal level, it would be
3 extremely appreciated.

4 The next issue that I would like to briefly discuss is the makeup of the
5 management review board, the IMPEP process. I would like to personally thank
6 the NRC and all the staff for the efforts that they have made to date to make the
7 states a part of this process and an integral part of this process. We greatly
8 appreciate it. And I think we have learned, as well as the NRC, a whole lot
9 through the IMPEP process.

10 Since the states now currently, or the agreement states now have about 80
11 percent of the licensees nationwide, we would like to see if anything could be done
12 to change whatever laws, get some legislative changes, to allow the state member
13 of the management review board to be a voting member.

14 Currently, we can only act as an adviser. But I would like to thank all the
15 members that I have served with on the management review board, because they
16 have listened very carefully, closely and taken into account any comments made
17 by the state representative. But we would truly appreciate that if there's any way
18 that we can find the legal means to be able to actually have a vote on this board.

19 One other issue as far as the MRB goes is there has been expressed some
20 concern that having the Office of State Programs being the one that formulates
21 the inspection teams, plans the inspections, and reviews the inspections, prior to
22 going to the management review board, that there may be some perception of

1 conflict of interest with that. The director of OSTP is serving on the management
2 review board.

3 Please don't get me wrong, to date we have seen no evidence that this has
4 caused any problems. But we were concerned that somewhere down the line that
5 if there's an issue, that it is a close call in the final vote on which direction to go is
6 left with the state programs director, then they would more than likely want to side
7 with their staff. And that's understandable. We would just like that to be
8 considered that some other equivalent management position within the
9 Commission be used to -- in his stead.

10 Thirdly, I guess it's my personal opinion that we do everything -- and I say
11 "we." That means the state people that are part of the MPIP process, the
12 management review board, as well as everyone else involved in the process, do
13 everything we can to make the process as consistent across the board for
14 everyone.

15 I understand there are some differences between programs and some
16 reasons why you may want to call something different in one state than the other.
17 But there has been some concerns relayed to us that maybe some states were
18 being found inadequate in an area when another state may have been given some
19 benefit of the doubt. And we just urge that everybody do all they can to have a
20 consistent process across the board.

21 MS. CARDWELL: The next topic concerns an issue that was brought to us
22 by our membership. It concerns becoming aware of a draft MOU between NRC
23 and EPA concerning decommissioning and decontamination of NRC license sites.

1 Again, as Pearce said, don't get us wrong, we certainly encourage this kind of
2 MOU and agreement between the federal agencies. It helps the states out
3 immensely.

4 So we don't want to say anything that may lead to stopping any
5 forward motion on that. We want to continue. But we are also aware that the
6 states may very well be impacted by such an MOU. So we would urge you in the
7 future to please consider informing the states when this kind of agreement is
8 being developed, so we are aware of what's going on that may very well indeed
9 impact our states.

10 MR. SINCLAIR: I guess I get the last word. And that's always good, I
11 guess.

12 I want to talk to you about what I would call relationship with the states,
13 maybe a new paradigm, some thoughts that I have developed in terms of where
14 do we go from here.

15 I think we find ourselves in the current situation where we have an
16 increasing workload with our staffs, well, even we have less staff and an
17 increasing workload. The resources on both sides are dwindling. Both the NRC
18 and the state sides are dwindling. And we have taxpayers and we have fee
19 payers that really are demanding more efficiency in government.

20 Well, I think we all can improve our efficiencies to a point of, and I
21 think we have taken a lot of strides, both from the NRC perspective and from
22 various state perspectives to do that. But really beyond that, what is the next
23 step?

1 And I think maybe one solution is to help improve what you have heard
2 today expressed many times regarding the partnering, coregulator concept
3 between NRC and the states. And we have jumped on this, you know, several
4 years ago. And it has been, being developed as we move forward. And it really
5 has required a mind set change by a lot of us, both on your side and our side.

6 And I think we really need to evaluate it from the perspective of what does
7 each party gain by entering into such a relationship. What does the NRC gain?
8 What do the states gain? What can you bring to the table?

9 And as of today, I see some of our challenges being following: We know
10 that there are more agreement states in the pipeline. And there are even some
11 states that are seeking amended agreement.

12 I wonder who that would be.

13 And overall, what this will translate into, will be a continuing resource issue
14 for you at the NRC. And that's a problem.

15 We look at the states and where they are today. We are also
16 feeling the resource pinch.

17 In a recently completed survey by the Environmental Council to States,
18 ECS, of environmental programs at least, in 30 of 40 states, there was a reduction
19 being shown. And this translated into things like hiring and promotion freezes,
20 travel restrictions, or contract purchase restrictions. And those were the most
21 common things that were being seen. Of course, the worst outcome, as Pearce
22 expressed that happened in his state, could be the elimination of personnel within
23 the agencies themselves.

1 So I think we both have a challenge in terms of what are we are
2 going to do about resources in the future.

3 You have already seen the effort that we have initiated regarding
4 state organizations such as CRCPD and OAS trying to work more closely together
5 in order to share those limited resources. And I really think that small and medium
6 state programs really must decide what resource commitment they can bring to
7 the table.

8 Traditionally, we put a lot of burden upon our larger state programs.
9 And it's really been disproportionate.

10 And so I think there's a great opportunity for us as state organizations and
11 the NRC, to provide opportunities to these smaller programs to help in the
12 process.

13 I also believe that the state and NRC must continue to improve
14 communications. Is communications through the OSTP the best model? We
15 really have to work at this.

16 For instance, as we come to Washington to meet with you and brief
17 you, we would like to see you also come and meet with us and our state
18 organizations during opportune times. A couple those opportune times being the
19 OAS annual meeting. And, of course, as I have mentioned to many of you, that's
20 taking place in October 1st through 3rd in Denver, Colorado. And also in the
21 spring the CRCPD has annual meeting. I believe that's in May of next year in
22 Anaheim, California.

23 So we want your presence. We need you there.

1 I was very happy to see the SECY paper today where you indicated your
2 willingness to move ahead alliance process. The pilots now are now underway.
3 It's going to be a challenge for us. And I think we need you, and you need us.

4 The states are going to need a strong national program, because there are
5 national needs there. A lot of the rule makings, we look to you to be in the
6 forefront.

7 So are we heading in the right direction? I can point out some
8 things where I think we are heading in the right direction. This year we have had a
9 lot of interaction regarding homeland security issues. We have had your staff
10 come and talk to us about rule making improvements. We have had your staff
11 come and meet with us and have conferences calls with us regarding allegations
12 and how we can improve that process. I still think IMPEP is working well, even
13 though Pearce indicated we may need some tweaking. I still think that's a good
14 viable program.

15 I think we continue to have good participation in working groups
16 and participation in various stakeholder meetings by the states. The pilot
17 programs will be interesting to watch and see how they develop.

18 There's also a concept out there of how can states provide
19 assistance to other states that might have particular resource needs. And there
20 are some ideas out there about how that be done.

21 We appreciate the ability for you to give us predecisional
22 information and our ability to comment on that. And I think we can work together
23 on numerous things. For instance, if there's national legislation that is to be

1 proposed, states can help you in that area by getting support as you need in
2 Congress.

3 So I guess in conclusion, I would emphasize to continue in the right
4 direction. I would emphasize maybe three things. One is early involvement as
5 possible. Sometimes that's not possible, because as issues emerge, sometimes
6 they are critical to deal with and you don't have a lot of time sometimes. But as
7 early as we can be notified, the better in terms of getting us involved in particular
8 situations.

9 And now I would say communicate, communicate, communicate,
10 and communicate. And I think we have had a pretty good honest communication
11 effort.

12 You know, if you mess up, I don't mind telling you to your face that I believe
13 you messed up. And I hoping that you feel the same as far as the states, that you
14 feel like you can come up to us and honestly communicate with us. I call that step
15 out of the box communication. We all try to be so politically correct all the time.
16 But sometimes we need to be pretty frank with one another.

17 And then finally, one of the issues that we have worked on for a long time,
18 and we still have a problem with is really the trust and respect issue. And it's the
19 issue of who can do it better.

20 Sometimes we get the sense that there are beliefs that states cannot do it
21 as well as their federal counterparts. I'm sure that federal counterparts feel
22 sometimes that it's just the opposite.

1 And so, I think we have to be accepting of sufficient product results.
2 Sometimes we look for the gold standard when the brass standard will do.

3 So that's the conclusion of my comments and our presentation,
4 Commissioners. We would be glad to answer any questions at this time.

5 CHAIRMAN MESERVE: I would like to thank you all for a helpful
6 presentation. And I agreed with your comment that communications are
7 important, because communications help to build the trust and respect. And, of
8 course, this meeting one of the vehicles by which we do communicate.

9 One of the things that we do in the Commission is to pass around
10 the opportunity, responsibility to go first. And as it happens, this is in terms of
11 asking question, as it happens, this is Commissioner Dicus' turn.

12 COMMISSIONER DISCUS: I thought I was going to be last today.

13 Let me simply begin by noting a message you can take back to
14 your directors or secretaries or whoever the proper titling is as headed of the
15 organizations, which may be you, that you represent. But also your legislators and
16 your governors. Given the restricted resources that I know you are dealing with --
17 and they are somewhat more severe, perhaps, then the restricted resources that
18 we deal with. But they free up your time to be here or to participate in the
19 activities that you participate in. I know you the board at CRCPD you guys meet
20 four times a year?

21 MS. CARDWELL: Twice a year now.

22 COMMISSIONER DICUS: Twice a year now. You have to restrict.
23 You used to meet four times a year. That's time away from -- believe it or not, the

1 only thing that -- Cindy and Bill don't do this full-time. This is and other duties.
2 And I think it's important to recognize that and the efforts that all the states go to
3 support you.

4 Now, I do have some questions, given that as a statement.

5 I'm curious about this standing compatibility committee that may come out
6 of the materials working group. I understand this is something that you want --it's
7 a recommendation going forward as this process goes forward?

8 MS. CARDWELL: Yes.

9 COMMISSIONER DICUS: Does it signify, however, that there have been
10 problems in the past?

11 MS. CARDWELL: One of our members of our committee, and I will quote
12 him, used the term "creep." Commission creep, which is the best way I have heard
13 to describe it. There is, I believe, a policy or some such that describes the levels
14 of compatibility and how a rule is to be evaluated to see which level of
15 compatibility it should fit into.

16 I will give you the best example I have found, and I found it a few
17 months ago, and actually called Bill. I don't believe this. It was with the recent
18 well logging rules, 10 CFR Part 39. There was a minor change in part of the leak
19 testing requirements where there's a reference to hydrogen 3, and in parentheses
20 the word tritium has been added. That's a compatibility B designation.

21 That seems like a very small and trivial example, but that is the best
22 example and the most recent one I have of why in the world is that a B.

23 COMMISSIONER DISCUS: I hear you.

1 MS. CARDWELL: So it is not, I would say, not anything that is earth
2 shattering. We can point out an entire part. But it's just these little things that lead
3 us to believe that there may be, in some cases, a tendency to creep away from
4 that really should have been a D.

5 MS. ALLEN: And in concert with that, the idea of states taking a more
6 active role in possibly developing regulations, instead of a working group of five
7 NRC people and one state person, maybe it's five state people and one NRC
8 person.

9 The people might not be that familiar with that compatibility
10 determination criteria and they may take the first stab at it, and that way, there's
11 some sort of group that is focused on compatibility, that can provide guidance so
12 that there is consistency, no matter who ends up writing those regulations.

13 MR. SINCLAIR: The impact of that B compatibility is that in the state,
14 because it's a B, has to go through a rule making. That's a resource issue.

15 And if we don't have to do that, that's good.

16 COMMISSIONER DISCUS: The following question goes a lot to what Ms.
17 Allen said that are we not following -- our staff, on this side of the table, not
18 following our criteria, meaning the way we go about making that determination?
19 Are you saying that it's maybe a group over here and a group over there?

20 I think that's what I heard you say. So that it's not consistent?

21 There are particular examples, like the one I have been given is useful. But
22 how the compatibility determination is made, if that's inconsistent, is another issue.

1 MS. ALLEN: I think it's just an educational process. We are losing a lot of
2 the people that originally wrote regulations. When you write the policy, there's no
3 way you can possibly write every combination of interpretations there. So I
4 envision this more of an oversight group to ensure consistency.

5 We don't see a big, necessarily, a big problem right now. But we
6 are just kind of looking out to the future. If we work more toward an alliance type
7 concept, we want to prevent big problems from occurring. So we think that this is
8 a nice mechanism to ensure consistency as we go through some of these growing
9 pains.

10 MR. O'KELLEY: Just a brief comment. I would also say that in the spirit of
11 the national materials program, I think it would possibly be a another pilot or a
12 good opportunity to have the states or a state representative involved. In the
13 setting of compatibility level, I think it would give the rest of the states some
14 confidence that at least their concerns were heard prior to the compatibility level
15 being set.

16 At the last several agreement state meetings there were several people that
17 voiced some serious concerns about the compatibility levels set, in Part 35,
18 especially when it comes to training and experience.

19 And I think if there was or can be a method to ensure state involvement
20 prior to the compatibility level being set, I think it would be a whole lot easier to
21 accept and again would be exactly in line with the premises set up for the national
22 materials program and the co-regulation.

1 COMMISSIONER DISCUS: Well, I will take that away as I look into that
2 situation.

3 I want to mention this next topic I want to go to. Actually, I have
4 three topics here I want to go to. The next one, though, is orphan sources and the
5 security and control of the orphan sources.

6 As I think you all know, we are working with DOE on a program with
7 regard to that, but I also know that CRCPD has a program as well to help with this
8 issue. And usually when an orphan source is found, I know you are the first ones
9 usually on site to deal with that issue.

10 But are you dealing with DOE at all on the issue? Either OAS or CRCPD? I
11 know you deal with EPA on it.

12 MR. FRAASS: CRC is working with the Department of Energy on it. Some
13 of the funding for that orphan source program is coming from them, as well as
14 from yourselves at the Nuclear Regulatory Commission. In many cases, the
15 problem is more a paperwork issue to make sure that the states and CRCPD put
16 together the correct set of paperwork, because CRCPD cannot take on the liability
17 of the sources. We simply act as a middleman to help the states find the
18 resources, typically the funding provided either by your agency or the Department
19 of Energy, so that the sources can be properly disposed of.

20 That takes basically a lot of legal writing, as opposed to technical
21 aspects.

22 MS. CARDWELL: That seems to be holding up, I think, a lot more states
23 from participating in the program at this point in time. What we have found is

1 lessons learned from Colorado program it is the legal process and the paperwork
2 that takes the amount of time. We are still actively soliciting states to become
3 involved in that program that we have to take care of the orphan sources.

4 COMMISSIONER DISCUS: About how many states do you have involved
5 in it?

6 MR. FRAASS: Being new to it, I believe we have had four or five. Once a
7 state has signed the agreement, then in the future, it becomes very simple. But
8 we have to get the agreements in place with a given state. And right now I think
9 we have three different versions of the agreement based on how the state views
10 itself, how it views its legal system, its liability. We will work with them to create
11 those as needed state by state.

12 MS. ALLEN: Some states have worked with DOE directly in trying to get rid
13 of specific sources. And we have found that to be quite useful for some things
14 that we couldn't get rid of any other way.

15 But they are also kind of stressed budget wise also.

16 COMMISSIONER DISCUS: I'm going to walk away from that one for a
17 moment. The final issue has to do with some things you brought up about
18 restriction of funding, loss of the funding that we had to do for training, for paying
19 for training, for paying for per diems and travel and all of that. That was a budget
20 crunch issue on our part, which still had not been alleviated. Some other things
21 with regard to maybe some legal impediments.

22 We have, to the extent that you can be more involved or
23 representatives of states can be more involved in some of our committees or how

1 we deal differently with things, given there are several things that fall into this
2 category, given that, we get our marching orders from Congress like you get your
3 marching orders from your legislators. And given the fact that I realize that some
4 of the programs get a little buried in state government and don't have so much
5 access to the political elements in the state that move up here to Washington. But
6 some of them do.

7 But I'm urging you -- and I don't suppose I have a question in this.
8 But if you have, you know, in some way or the other, access to over 500 people
9 who make the laws that we live with on this side of the table, and your ability to
10 interact with them and to make them very much aware of things that do impact
11 you, that they put on us would be very, very helpful to us. So I just urge that to the
12 extent that CRCPD and OAS can work with your organizations and with your
13 states to help us help you. Because that's really part of what it comes down to.

14 And that's all I have, Mr. Chairman.

15 CHAIRMAN MESERVE: Thank you.

16 Commissioner Diaz?

17 COMMISSIONER DIAZ: Thank you, Mr. Chairman. Let me go back to
18 orphan sources. As you know this has not been obtained by good means. But I
19 have obtained visibility and it has become a little more urgent. I was just reading
20 budgets and things that these programs are continuing for at least fiscal year 05.

21 Have you been able to establish, you know, a better sense of when
22 are we going to be able to -- if not complete the significant completion of your
23 work in this area, where can we see things closing down or be able to at least

1 receive recommendations that will be, you know, manageable to us and to you
2 and will actually represent an improvement on the state of the art?

3 MS. CARDWELL: In terms of the orphan source program?

4 COMMISSIONER DIAZ: Right. You being supported by us, you guys have
5 been working hard on it, what is the scale that you are working to, you know,
6 compared to what to the present urgency is? Is there any changes in this -- any
7 urgency of moving forward more rapidly?

8 MS. CARDWELL: I see. And I will honestly tell you we don't see that that
9 end point at this point in time. As I said earlier, we are trying to encourage more
10 and more states to become -- to do the paperwork get legally involved in the
11 program, so that we can utilize the common resources that we have to take care
12 of the orphan sources.

13 And I will just add it's not just the orphans, it's the unwanted as
14 well. There is a responsible party but they don't want it. So the list tends to grow
15 in terms of when you look at what's out there that can be disposed of and probably
16 should be disposed of.

17 So the honest answer is, we have not looked at the end.

18 COMMISSIONER DIAZ: Are we decreasing the uncertainty? I mean, are
19 we able to say this is now becoming to a point that that we can identify where we
20 know or when we do not know?

21 I mean, what else can you do? You guys are out there on the front lines,
22 and I'm always questioning whether we are -- yes, we are putting resources on
23 this, we are trying to make policy, but the issue is, it needs to get done.

1 And so I'm asking whether you get a better feeling of when this is going to
2 be to the point we can say, yes, we can start providing closure on some aspects of
3 it. Not that it will ever end, but at least in managing it.

4 MS. CARDWELL: I guess at this point, speaking for CRCPD, I can tell you
5 that we can take a look at what's been dispositioned to date. I don't know if we
6 have an idea in terms of being able to compare that to what's out there as the total
7 inventory to be dispositioned, but certainly show that this is the progress that's
8 been made to date. I can't tell you what that is right now in terms of quantity that's
9 been disposed of. But we can certainly put that together.

10 COMMISSIONER DIAZ: I will leave it like that.

11 I notice you had a resolution on clearance. Thank you for it. This
12 is an issue that I consider is very important.

13 Apparently we all know this has been on for a long time. From your
14 viewpoint, having been dealing with clearance as long as we have, do you see that
15 a -- and you are asking us to continue for rule making. Do you see there is at
16 least a reasonable understanding -- not that there's agreement, there is no
17 agreement, but an understanding of what a rule making would actually do in this
18 area as far as your state is concerned, some programs? Is that understanding
19 there now after we have been trying to have participatory meetings and workshops
20 and everything else? Has that improved or have we made no progress as far as
21 what clearance means?

22 I mean, you have a clear statement. Obviously you know what I'm saying.
23 I'm saying from what has been going out, what do you see of what is out there?

1 MR. SINCLAIR: Well, that's a real difficult issue. And we have been trying
2 to deal with it for a number of years.

3 I think we are making progress in terms of the better defining, you know,
4 what that means. But it comes down, once again, several aspects. One is, just
5 the education aspect. In terms of all the stakeholders understanding what it really
6 means when we release these kind of materials in terms of public health and
7 safety. And we have not done a very good job in the past of providing good
8 answers for that. And I think we are still struggling with that. And I think that's
9 really going to be a challenge for us in the future, when you try to move ahead
10 with any of these rule makings.

11 COMMISSIONER DIAZ: For the past two and a half years, it was a
12 significant effort to try to improve this understanding. The question is, it's your
13 sense that it has improved. Not agreement, I understand that agreement part, but
14 are we making progress in people understanding what we mean by clearance?
15 Have we had feedback from your organizations? Have you guys made a better
16 job of getting that point across?

17 MS. CARDWELL: Personal opinion, and I'm not speaking for the
18 conference here, because I haven't had an opportunity to ask everyone, but from
19 our state perspective, I think we have a ways to go. I think just the term, the word
20 clearance doesn't say what we are intending to do, where we are intending to
21 head with that.

22 We encourage forward process in that area, but our staff who have
23 actively participated in several of the working groups and the clearance issue,

1 understand what it means. And we are one of those large programs. We have a
2 large staff. When we mention the word to some of our staff, maybe some of our
3 more junior staff, they don't understand it.

4 So to give you a grass-roots example, I think the education, as Bill
5 said, is what we need to do. And somehow -- I don't have the answer for it. But
6 when you hear the word "clearance," I think people go, what does that mean
7 really.

8 MR. SINCLAIR: There seems to be a sense of there is some compromise
9 of health and safety if you use the word "clearance."

10 COMMISSIONER DIAZ: So release of unimportant quantities of radioactive
11 materials, nobody ever thinks there is an unimportant quantity of it?

12 MR. O'KELLEY: Well, if you look at what was proposed in California I think
13 you can what see the danger is out there with the misconception of health and
14 safety aspects of minimal level releases.

15 COMMISSIONER DIAZ: Thank you, Mr. Chairman.

16 CHAIRMAN MESERVE: Commissioner McGaffigan?

17 COMMISSIONER MCGAFFIGAN: Thank you, Mr. Chairman.

18 I'm going to try to take off about six different things and do it in a
19 finite period of time here. I'm going to start, just in passing, I saw the CT scanning
20 resolution that you passed. And that's not our area. But as a citizen, I commend
21 you for putting that out. We have an institution, at least one within a half mile of
22 this place who advertises on a local radio station, urging people to come in and

1 get their body scan. And I believe pet scans are now being used by these folks in
2 conjunction with the CT scans for people with no symptoms.

3 And I think your resolution -- and I told an anecdote at the Reg Info
4 conference last year. My son, unfortunately fooling around with a 260-pound high
5 school football player from South Carolina, Strum Thurmond intern, and my son
6 weighs about 140 to 145, ran into a door as the guy sort of flipped him down the
7 hallway, I'm sure like a gnat off an elephant. So he hit his sternum.

8 So he got taken to a hospital that's now closed in the District. And
9 they did a CT scan of his brain without my permission, but I had signed all the
10 medical release things. And it was just totally medically inappropriate, according
11 to all the doctors I have talked to sense. I'm not going to sue him or anything, but
12 it was stupid.

13 But people get these machines, right, you know, and then they
14 have to make, turn them into a profit center. So I commend you for that.

15 The issue that Commissioner Dicus raised with you about this
16 compatibility committee, I think the example that Cindy raised is a good one, the
17 well logging one. The example that Pearce raised about Part 35, we heard twice.
18 This group of commissioners had people sitting on the other side of the table not
19 once, but twice, telling us it was that it was the strong view of at least some in
20 CRCPD that the TNE should be not the compatibility level that we made it.

21 And we all had in our mind, you know, we live in this metro area
22 where doctors in Maryland couldn't practice in Virginia or D.C. or vice versa if we

1 didn't have rationale and national standards. So that was what was motivating at
2 least me and the Commission as a whole. But you were heard.

3 And I think if we go down that route, you have to understand that
4 there's -- you will be heard but you may possibly disagree. If the well logging had
5 been called to our attention, I think you would have had also unanimous,
6 instantaneous why-are-we-doing-this reaction from us. And we would have
7 agreed with you. And I think -- just so you understand, there's a possibility of
8 disagreement.

9 Question, on the SSR on T norm, part N, I don't know what the status of
10 that is. I know you have been raked over the coals by one of our sister agencies,
11 at least with regard to the Zircon sand exemption that you would like to put in
12 there. I personally think it's a perfectly fine exemption. And the NUREG
13 document that we have -- and I forget the number of it -- that really is, that's being
14 used by the other agency that is really not very good. I mean, it piles
15 conservatism upon conservatism upon conservatism.

16 I think Mr. Collins from Illinois knows this inside and out. And it
17 ends up with ridiculous guesstimates, rem, if somebody stands next to Zircon
18 sand pile 365 days with the wind blowing, and it gets in his lungs. But the industry
19 believes that nobody gets more than 100 millirem if they follow normal OSHA
20 practices.

21 So just so that you know, at least this commissioner doesn't think
22 that NUREG document -- and the staff -- if Carl Paperiello were here, he would

1 tell you that NUREG document is not all that hot. But he might tell me, with all this
2 grief you are getting, is there a chance of finishing subpart N?

3 MS. CARDWELL: Oh, yes.

4 Just an update we met last May with your sister agency that had
5 questions about the part N. And I really think that much of the issue, many of the
6 issues that were raised were a result of reading the rule without the implementing
7 guidance document.

8 And when those two are put together, the explanations behind
9 some of that was there. Now, that doesn't mean they didn't still disagree with
10 some of it.

11 We, the board, asked the committee to go back -- and actually the
12 committee came to us and said, we have gotten some new information about
13 parameters that that they used in the modeling for the Zircon exemption. They
14 went back, remodeled using the different parameters and have tweaked the rule in
15 several other places, not substantially.

16 It substantially exists as it did the first time around. Have come back, and
17 the rule is up for peer review right now.

18 COMMISSIONER MCGAFFIGAN: Again, it's something that isn't directly in
19 our jurisdiction, but having it there will help have a fabric of rules that will cover the
20 waterfront a little bit better than it is today.

21 I'm going to tell an anecdote again about in homeland security.

22 Last year we, in October, we put out an advisory with regard to how to
23 handle the shipment of large quantities of bipartic material, primarily cobalt 60 on

1 our highways and in our rail system. And we got a very good letter from the State
2 of New Jersey. I've told Jill Lapote this, urging us to put this into our normal
3 regulatory framework.

4 And Commissioner Merrifield and I and the rest of the Commission
5 agreeing, have been moving to do that ever since, as you are well aware. And
6 hopefully that will be done shortly. But the fact that New Jersey took the time to
7 write in and do what they did really provided some impetus. So that was a good
8 example of good communication in homeland security area.

9 The other thing I will say to you just in passing, and get any
10 comment you want to make -- one thing we have been very sensitive to is not to,
11 in the homeland security area, come up with unfunded mandates at a time when
12 your budgets are under enormous pressure. So I hope that people out there -- I
13 know you all understand that common defense in security was reserved to us. We
14 can't ask you to do things under common defense -- under health and safety that
15 don't make sense from health and safety perspective, only make sense from a
16 common defense and security perspective. And yet we have been trying to find
17 ways to partner with you as we figure out how to provide these additional common
18 defense and security requirements.

19 It comes up in this highway route control quantity. We may be dealings with
20 some of your licensees directly. But we are going to try to work with you and do
21 the right thing there.

1 And I hope that's being heard. But I have seen obituaries for the agreement
2 state program and what whatever written. And I don't think those are appropriate,
3 really. I think they are uninformed about what we are trying to do here.

4 And as I say, you can mark us down for being too sensitive to your
5 budget issues and unfunded mandates. But there's a strong sense that we
6 shouldn't provide you with unfunded mandates in areas that, arguably, would be
7 illegal anyway for us to try to impose on you.

8 But if you have any reaction to that --

9 MR. O'KELLEY: I appreciate the nonunfunded mandates. I think we
10 understand the importance and the need to proceed in certain methods and
11 mechanisms and time frames. I think from the agreement state standpoint, we
12 just, again, I think to reiterate what's been said several times is that the earliest we
13 can be involved and provide comments.

14 COMMISSIONER MCGAFFIGAN: In this case New Jersey was there
15 before the beginning. The EPA and NRC MOU, that is not final yet, although it
16 may be. But you know, if EPA wants to second guess the decisions of the 32
17 agreement states to the degree they want to second guess the decisions that we
18 make when they are compatible with our rule, and they seem to have some
19 desires in that area, I think they will have to go off -- and they presumably have
20 limited resources too -- and try to enter into 32 separate agreements with the 32
21 agreement states.

22 Now, your hope should fondly be that they don't have the same
23 desire to second guess your decisions that they have to second guess our

1 decisions. In which case -- or that they don't have the resources to go try to enter
2 into 32 separate memorandum of understanding as to when they will be invited to
3 second guess your decisions.

4 So I don't think there's a real resource issue on you at the current time. And
5 I hope there will never be.

6 The final thing I will say to you, you know, should we be -- you all face these
7 budget circumstances. And we want you to be successful. And, you know, it's a
8 pretty blunt instrument, and I don't recommend it.

9 But if your budgets were cut far enough by your legislators, legislatures, and
10 governors as they go about their business, it will raise compatibility and adequacy
11 issues.

12 Should we think about having the Chairman or somebody be writing you
13 when you are in dire circumstances, you need a boost, saying, please think about
14 this cut, lest, you know, you could be placing your program in a situation where it
15 would be inadequate, incompatible, and you might have to return it to the
16 government? Or would they, at that point, say we can return it?

17 And you know, so I don't know how frank you want to be about this. But we
18 could be an advocate for your budget, just as, I think, one of the other
19 commissioners suggested, you can be an advocate for ours, if that were
20 appropriate.

21 COMMISSIONER MERRIFIELD: Commissioner McGaffigan, if I can just
22 chip in with a piece of history, and the staff can certainly correct me if I'm wrong. I
23 know this because this it is my home state.

1 Back in the late 80's or early '90's, Chairman Zack wrote then
2 governor now senator, Judd Gregg, in fact, making statements to that effect that
3 the state was not compatible and did not have the resources necessary to make it
4 happen. And that was used as a tool to convince the governor and the legislature
5 of the state of New Hampshire that they needed to get the funding to put New
6 Hampshire back to where it needed to be.

7 I would footnote, unfortunately, we are in a similar situation in New
8 Hampshire right now. But I will get to that in my time.

9 COMMISSIONER MCGAFFIGAN: That's fine. And I think we can be
10 advocate. I think they want to have -- if I were a governor and I were a legislature
11 and I had an agreement state program, put it in place, I would want to continue to
12 have that local capability in my state and not send it back to Washington. So I
13 think a letter like that -- and I'm glad that Commissioner Merrifield has pointed out
14 that at least one has been sent in the history of the agency. If that would be
15 useful, I think you all should, without getting yourselves fired, tell us when we
16 should dispatch it.

17 MR. O'KELLEY: As being the one probably under the biggest budget ax
18 here, I can say anything and everything anyone would do to potentially help out
19 would be very well received and very much appreciated.

20 There is that double-edged sword that if you say that you may have to
21 return it back to the federal government, then they can say, oh, this is another way
22 we can save money, if it's going to be still regulated and we don't have to use our
23 state resources to do it.

1 And when you look at my situation, my program is in an agency that deals
2 with both environmental regulation and is also the state department of health.
3 When you look at our agency deciding where the dollars go, that child that needs
4 an immunization is going to get the money before the radiation control program.

5 From a state perspective, especially in a state like South Carolina, that
6 ranks so low nationally in education, that's the seller, both politically, publicly. And
7 the vast majority of state funds, the sacred cow, so to speak, is education.

8 I think if the letters and the support can be couched in that, these licensees
9 can be best be regulated at the state level, and the importance of regulating these
10 sources support and why we are doing what we are doing, I think could be very
11 beneficial, and help out with bosses and politicians that we have that are looking
12 at a much bigger picture than just the radiation field.

13 MS. CARDWELL: And we may be able to, on the state level, we have an
14 advantage to -- excuse the phrase -- but to use you in another way in that, working
15 in conjunction with what Pearce said, is to get the support of the people that we
16 regulate. They are very vocal and can be very vocal with our legislatures, much
17 more so than we can be. And they would much prefer to be regulated by the state
18 on the state level for one our fees are much cheaper.

19 That in and of itself is an incentive for them to get there.

20 MR. O'KELLEY: And if you did say that this could go back to the federal
21 level, the expense to your licensees would be double or triple what they are now.

22 MS. CARDWELL: And it has helped. We have another anecdotal example.
23 In the late 80's, there was a hint, I guess a suggestion made that possibly part of

1 agreement could go back to NRC. It resulted in legislation during that very next
2 session that said, we will not do that.

3 So I don't think you want the state of Texas back --

4 MR. O'KELLEY: In one of our -- the first thing our agencies started looking
5 at when these severe budget cuts starting coming down, was are there any
6 programs we can turn back over? So it's a fine line.

7 COMMISSIONER MCGAFFIGAN: Thank you.

8 MR. FRAASS: I would offer one other thought to that. Pearce's remarks
9 brought to mind some discussions we have had. Part of our problem as he
10 eloquently talked about, that child that needs a shot is going to get the attention,
11 we have been highly successful both in the Nuclear Regulatory Commission and
12 the states in protecting our citizens from excess radiation.

13 In our success, we have very few things that we can point to to say, had we
14 not done this, A, B, C, and D, would have happened badly. We are very fortunate
15 those have not happened badly. But in our success lies part of our problem in
16 getting funding. We are not easily able to point to a problem that's out there.

17 COMMISSIONER DISCUS: I just want to say, along these same lines, I
18 had one legislator -- we had a biannual budget, so every two years I was down
19 fighting for money. I had one legislator who would always ask me, well, how much
20 does the NRC pay us to do their work?

21 And so I would come up with these other answers. But he always asked the
22 question.

23 CHAIRMAN MESERVE: Commissioner Merrifield?

1 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

2 I will start with William Sinclair's comment that we need to make sure we
3 are frank. I think that's a good comment. I think an active dialogue requires that
4 and requires it both ways.

5 I have just a question and then I'm going to -- some comments I
6 want to make. We sort of bantered around one of the issues which is of sort of a
7 public confidence concern, is the way in which collectively we are dealing with
8 portable sources notably troxler gauges.

9 We all have these headlines in the papers about them going lost. Now,
10 from a safety consequence standpoint, we know that they don't rank very well.
11 But, at the same time, the public thinks a lot about this.

12 We, for our part, are still in a nature where we require them to be
13 padlocked to the back of a pick up truck with a chain. I got a pair of bolt cutters at
14 home. I can take them off as well as anyone else.

15 I have heard that perhaps Texas, for your part may be going with
16 something different, more robust. Has there been some discussions about this
17 one issue among your membership and any suggestions about how we might
18 collectively deal with this?

19 MS. CARDWELL: Well, I will speak for the state of Texas. What we did
20 was issue an advisory that came from radiation advisory board. We asked them
21 to take some additional measures outside of those required by the rule in order to
22 safeguard the sources for that.

1 That was distributed. That advisory was distributed to the rest of the states.
2 There's been no formal discussion in terms of within our organization as to how
3 that might also be disseminated. I think it may have been overcome by some of
4 the homeland security issues.

5 MS. ALLEN: There were some discussions I was party to with some people
6 from the states and NRC talking about this particular issue. And it looks like the
7 biggest problem is that they are visible. You can see these devices and then they
8 become targets. Or someone says, well, that looks kind of cool, I think I will take
9 that. Some people think that the container itself is just a bunch of tools, so they
10 want to grab that container to use the tools inside. But when they open up the
11 container, they find something totally different.

12 So one of the comments was that maybe this thing should be better
13 hidden in the back of the truck, whether than sort of out in the open with a chain
14 around it, the chain kind of says, look at me, I'm important. This is something I'm
15 trying to protect. But if it was better hidden in the trunk of a car or if the truck had
16 a cover over the top or some sort of container that would sort of conceal it a little
17 more, then people would less likely to try and get that particular device.

18 We did discuss possible other mechanisms, stronger locks on the thing.
19 But some of these containers that you would put the devices in are made of
20 plastic. So they are easier to break than the locks would be.

21 So we kind of talked about a lot of different ways that we could
22 approach this particular issue. And it just seemed like common sense sort of
23 says, hide it a little bit better.

1 MS. CARDWELL: What we looked at in terms of the advisory was trying to
2 take the first step of increasing awareness. Letting them know that this is not just
3 them, it is consistently happening across the state and if they would just be aware
4 of that it is and here are some things you can do.

5 At that time we didn't feel we had the regulatory jurisdiction to
6 implement those things for one. So the awareness issue was one, because you
7 can take precautionary measures to the empty degree. And you can add extra
8 locks, you can do this, and they are going to take the truck, because they have
9 done that. They are just going to take it all.

10 MS. ALLEN: Another concern we had was someone suggested that they
11 be required to carry the device in the front of the truck, in the bed -- not in the bed
12 but in the cab, in the passenger compartment. And we then we kind of said, the
13 whole reason we moved it to the back was for radiation protection, health and
14 safety. So we have to watch out that our security measures don't infringe on
15 health and safety.

16 COMMISSIONER MERRIFIELD: Absolutely. I didn't mean to have a
17 detailed dissection of this one issue. I raise it much for an example.

18 It's clear with the changes that have been thrust on all of us as a
19 result of September 11th, that things like this we used to look for and the level of
20 acceptability that we used to have is no longer acceptable to the public or to
21 Congress. And they don't, they, I mean the public, and they I mean Congress and
22 presumably your legislatures as well sort of scratch their heads and say, why can't
23 these guys figure it out. They get these reports every week, every couple of days

1 we get these things lost and stolen, and can't these guys collectively figure out a
2 better way to do it?

3 And furthermore, down the line, we are going to have to -- there's going to
4 be more pressure to have greater control and accountability of materials in
5 general. We will all have to grapple with that. Because of the fear out there that
6 we are getting and I'm sure you are getting of how these may be misused by
7 people who may wish to misuse them.

8 I want to play on that in terms of a comment made by Commissioner
9 McGaffigan. And this goes, again, to the events surrounding September 11th. I
10 have seen some of the correspondence that you have had with us and some
11 concerns about the way in which we may have responded to some of that.

12 It's a difficult, it's a very difficult issue. I mean, I think it's evident by the
13 comments by many of the commissioners here today there is a desire to continue
14 our outreach and continue our partnership with the states. As I look back on my
15 experience in a previous life in which I dealt very significantly with the ecos and
16 recognize that the relationship we have with you is quite different than the
17 relationship that they have with our counterparts in other agencies. They need not
18 be mentioned. But I think I would rather be here than there. And I think you would
19 rather be here than there.

20 And so looking at the glass as being half full rather than half empty
21 is certainly appropriate in that regard. But in the event of security I think there is a
22 lot of pressure there. We have done better perhaps. And there are lessons
23 indeed we should be learning. But I think one of the reasons for some of the

1 actions at that point was the recognition that Congress and the public, who we are
2 all sworn to protect, wanted action.

3 And giving Congress an answer, that, well, we are still debating this
4 among ourselves and our counterparts wasn't the kind of answer they wanted to
5 hear. We had -- and I will mention -- we had closed door security level briefings
6 individually and collectively with members of Congress. They want action. They
7 don't want bureaucratic discussions. So that's part of the atmospherics upon
8 which we had to act. Hopefully we can plan better and do better. I think that issue
9 does need to be on the table.

10 The last thing I just want to mention for my part, this goes to the
11 state of New Hampshire, my home state, which I frequently mention at the table.
12 They have had a lot of difficult times. And I give everyone a lot of credit for trying
13 to work through them, and I hope they are able to get their way out of it.

14 Those folks up there are now thinking about something which is not
15 very tasteful. And that is, do they, should they give back the program, because
16 they don't have the dollars and they don't have the resources and the people to
17 make it happen.

18 And I think, at the end of the day for some very small state
19 programs, that may be something that needs to get asked.

20 I have a personal pet peeve. The programs that you have and the
21 programs that we have are different. They are apples and oranges. And this has
22 happened a couple of times when I have been out to states and met with
23 counterparts. And I get the, well, we are only a third of the cost that you guys are.

1 And they are very proud. And that's all well and good. But you don't have the
2 same level of responsibilities that we do.

3 And then I get the same people turning right around saying, by the
4 way, we really can't pay for training and those things. Can you give us the money
5 to do that. Well, that's more money that goes on our overhead and get passed off
6 to the diminishing number of people we impose our fees on.

7 So I would caution you, throwing those numbers around puts us in a difficult
8 position. I wish you guys could tone it down a little bit in that respect. They aren't
9 very good comparisons. And just saying you are cheaper doesn't necessarily help
10 us in dealing with the people. Frankly, we can't pass our cost on to anywhere
11 else. Congress isn't giving us the kind of general revenues I think we would like.

12 That's it for me, Mr. Chairman.

13 CHAIRMAN MESERVE: Thank you. I, underlying all of this is, I think,
14 common sense from, I think everyone at the table, that we want to make sure that
15 our communications with each other are operating smoothly and without barriers.

16 As you know, we have our Office of State and Tribal Programs which is
17 focused on communicating with states and others.

18 And a web site, a capacity for interaction.

19 Are there things, in terms of our processes, procedures for communicating
20 with you that should be improved? Do you have any suggestions for us?

21 You have mentioned a few things what regards to rule making and
22 so forth, but I mean in terms of our fundamental way of interacting, are there any
23 problems?

1 MS. CARDWELL: I guess, I would say from our organization standpoint,
2 not those that we aren't already working on in terms of earlier involvement. I
3 mentioned earlier, the rule making, working on how we can do that better. State
4 Programs has been very proactive in terms of dealing with us and NMSS, in terms
5 of how we can better work together on the particular rule making issue. That's
6 one example, but it's a good example of how we are at least trying to get there.
7 And that's half the battle.

8 MR. FRAASS: I would offer another comment on that. About a year ago
9 State and Tribal Programs helped CRCPD put together a process whereby those
10 states that were not agreement states could receive some limited access to
11 materials that NRC and we felt would affect them. At that time we only had two
12 states sign up for it.

13 Some recent material that came from the Nuclear Regulatory Commission
14 to us, we again offered that to that states, and I believe we have had either five or
15 six additional states sign up to have access to that information. That's a very
16 positive step forward, both from our aspect and yours that the states are still
17 interested. They are more interested than they were in some of these areas that
18 will affect their licensees as well as their state tax base and other rate bases.

19 So I think it's getting better.

20 MR. SINCLAIR: I just want to, you know, thank you, Mr. Chairman, and
21 others of the Commission for taking the time to participate in these kind of
22 briefings and also taking time, on your own personal schedules to meet with
23 various members of agreement states. I think that's a very important aspect for

1 you as well, as working closely with the Office of State and Tribal Programs, which
2 I will also compliment, in terms of helping us identify and work through a lot of
3 issues that you probably never hear about.

4 MS. ALLEN: And I think a lot of the working groups that we have formed
5 over the past few years have helped to foster a better relationship and better
6 communications. I have met a lot of people from NMSS that I never would have
7 interacted with before. I feel comfortable if I have a question, knowing that they
8 know a particular area, calling them up and asking them a question. Sometimes
9 they would call me about things.

10 It's just, sometimes just getting to know each other helps a lot. Our annual
11 meetings help, working groups help.

12 I kind of don't want to hit on training, but I do want to hit on training. When
13 there's regional training, then we get to know -- I mean, we are in Region 3. And
14 that's up in Chicago. We pretty much know the staff in Region 3. And Texas
15 pretty much knows the staff in Region 4.

16 But it's nice when we when there is regional training, because then
17 Ohio comes over and Iowa, and Wisconsin, and they get to know some of the
18 regional people as well and understand that there are other resources there as
19 well.

20 So when people get together for regional training meetings, health
21 physics society meetings, whatever, when people make the effort to say, hey, I'm
22 from NRC and I'm at this branch or this group and popping in and saying hello
23 when they are in an area and looking up a licensee that happens to be a NRC

1 licensee in an agreement state, sometimes just making an extra visit to the
2 licensing staff that might be doing similar things is a good way to start sharing
3 some resources, and putting names with faces and starting to work together on
4 things.

5 It opens up communication between the people sometimes trained to
6 scratch their heads to come up with the first draft to send to their managers. And
7 that helps a lot too.

8 MR. O'KELLEY: Just a brief echoing of the major improvements we have
9 seen in the relations and communications between NRC and the states. It's night
10 and day from what it was many years ago. And we are extremely appreciative of
11 everyone for that.

12 As far as areas that may be improved, again, I think we have all stated that
13 early, early involvement -- and I understand that deadlines and time frames are
14 sometimes beyond a lot of people's control.

15 But it's real difficult when we get a request for somebody to serve on a
16 working group and you need to be here tomorrow or three days -- or next week --
17 or even two weeks.

18 And the other area where I think we could, if there's anything when you are
19 looking at setting priorities, if the states can be involved in helping set priorities.
20 Because I don't think there should be an assumption that, because something
21 may be a priority for the NRC, that that automatically has to be a priority for the
22 state people. And them having to drop everything that they are being told by their
23 bosses they have to do in order to meet the deadlines and time frames.

1 So I know some of it is unavoidable, and I think the staff at OSTP do a
2 marvelous job in trying to get us as much information as soon as possible. And
3 there may not be a way to make it better. But as long as we are all aware of it and
4 have that in the back of our minds when setting time frames and priorities, it would
5 be very much beneficial.

6 CHAIRMAN MESERVE: I have just one other question that you have, and
7 we have all been wondering about the future shape of materials program, yours
8 and ours, and we have done a lot of work together in that area. And as you have
9 indicated, you have a staff requirement memorandum to go forward with the pilots.
10 We are very much committed to that and pleased that you are endorsing it as well.

11 But I do have a concern. And that is, if we, today would have said,
12 we are going forward with the alliance option and you have come here and told us
13 that you are facing very severe budgetary constraints. Although in the aggregate
14 that might be cost-saving venture for the system as a whole, it does entail states
15 having greater and different responsibilities than they have now, and therefore,
16 greatly increased costs associated with them. I'm not sure that you would be as
17 much of a champion of the alliance option today as you were when you originally
18 made that recommendation to us.

19 And then I wonder if you have some insights on that that you can
20 share with us. Hopefully the budget situation will straighten itself out. But it does
21 seem to me there's a budgetary impact to that option on you that I think we all
22 need to recognize early on as we start to shape this program.

1 MS. ALLEN: I suppose part of the buy in with an alliance process is that we
2 recognize no matter when, you can pick any point in time in the future or
3 previously, and there will be some states that are under stress, whether they lost a
4 lot of people to retirement, or there are budget problems or particular licensee
5 problem that that is pulling resource to focus on a particular issue. We recognize
6 that no matter when, you pick any point and type, that will be the case.

7 Part of the idea behind the buy in.

8 CHAIRMAN MESERVE: Not thirty or forty states.

9 MS. ALLEN: True. Part of the buy in with the alliances is getting states to
10 recognize that okay, well, look, a bunch of us don't have time to do this but we can
11 call up Cindy, she's working on this, and tell her our feelings and then we will just
12 trust that group to go ahead and do it.

13 I mean, you are basically buying into more of the process. You are
14 saying, look, we have equal say in a lot of this, we are going to try and represent
15 the states' views as well as possible, and try to get what the states are going to
16 say because of resources, I'm just going to have to adopt this. But I feel more
17 comfortable adopting it as is, rather than spending time and resources, tweaking it
18 and fighting it and arguing later.

19 Hopefully, by having a more up front process, we can have more
20 people sit back and say, okay, I won't work on that one but now I have time to free
21 up to maybe eventually work on something different.

22 MR. O'KELLEY: I have heard this before, that if you can't do it right now,
23 it's not going to work. And my comment at this time was no, we can't necessarily

1 do everything and immediately jump into it and start off running efficiently and
2 effectively.

3 The NRC for years has had the funding, the staff to basically do all
4 the things that you are going to ask the states to help do in the alliance program.
5 We are going to have to take some time to gear up to plan and to staff to do some
6 of the alliance work when you are looking at each state individually.

7 Some of the things that this will help us do, this will give us a justification for
8 increasing our budgets, to be able to put the staff and the expertise on to do this.
9 There are some states that have that already. That's where I think it's very
10 important for the Organization of Agreement States and the Conference of
11 Radiation Control Program Directors. Until the states have those staff in house
12 and the expertise in house and the operational policies and procedure to do this,
13 to collectively work together to get the job done -- and I think that's what I feel, as
14 a member of the board of OAS, and I'm sure CRCPD board feels the same way,
15 that we are committed to the process to make it work.

16 It may not work -- you know, sometimes you've got to drive the
17 Volkswagen before you drive the Cadillac. And you've got to take baby steps.
18 And I think right now we are willing to try to do whatever we can collectively to
19 make it work until individually we are more able and capable and have the funding
20 to do it.

21 MS. CARDWELL: Here's another example. We just discussed this a few
22 hours ago, and Pearce just came down and said well I have another 5 percent
23 budget cut by November. How are we going to be able to do everything?

1 Leads directly to what you ask. The stresses are reality, and there
2 are programs that who just flat out say no. He pointed out eloquently to me today
3 that when I get a request for an amendment for something we haven't done
4 before, I don't have enough staff to do the research and come up with what needs
5 to be done in terms of license conditions, guidance documents, what not. But I
6 sure have staff who could help out, if it was a collective effort.

7 CHAIRMAN MESERVE: That's very helpful. Well, again, I would like to
8 thank you all for joining us this afternoon. This has been a very illuminating
9 discussion for us. We very much appreciate it.

10 With that, we are adjourned.