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COVER LTR LAS VEGAS MINUTES

- 1 -

AUG 06 1986

TO: INTERESTED PARTIES

SUBJECT: MEETING MINUTES OF NRC MEETING WITH HLW STATE/TRIBAL
REPRESENTATIVES, 4/29-30/86, LAS VEGAS, NEVADA

On April 29-30, 1986, NRC held its first, independent meeting concerning NRC activities to implement the Nuclear Waste Policy Act of 1982. The purpose of the meeting was to discuss a number of initiatives developed by the NRC to streamline the high-level waste repository licensing process, as well as to demonstrate NRC's "pilot project" for the Licensing Support System (LSS). State and Indian tribal representatives from both first and second repository programs, as well as the Department of Energy, were invited to attend the meeting. A copy of the agenda, list of attendees, and briefing materials are enclosed.

The meeting took place in Las Vegas, Nevada, since NRC's LSS "pilot project" contains NRC data related to the Nevada project. It also provided an opportunity to work with DOE staff at the NNWSI Project office and obtain their feedback on the LSS data base system.

Enclosed are summaries of the various presentations given by NRC staff as well as the states and Indian tribes. A copy of the transcript is also enclosed.

Sincerely,



Joseph O. Bunting, Chief
Policy and Program Control Branch
Division of Waste Management

Enclosures:

1. Meeting agenda
2. List of attendees
3. Briefing materials
4. Summaries of presentations
5. Meeting transcript (Published Document)

Addressee list attached--includes attendees at meeting and other recipients of pre-meeting package who did not attend meeting (states/tribes in 1st and 2nd repository programs).

Bunting 2006

OFC	WMPG	WMPG	WMPG	WMPG		NTS 1082
NAME	COjalvo	NStill	DMattson	JOBunting		NTS 1084
DATE	86/07/24	7/25/86	7/25/86	7/ 1 /86		

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COVER LTR LAS VEGAS MINUTES

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DATE : 86/07/24	:	7/ /86	:	7/ /86	:	7/ /86	:	:	:

Encl to memo
to interested
Parties fm.
JOB - 8/6/86

Detailed Agenda

Tuesday - 29

8:30 a.m. Opening Remarks/Introduction	(Russell/Bunting)	15 minutes
8:45 a.m. Five-Year Plan for NRC High-Level Waste Repository Program	(Bunting)	15 minutes
9:00 a.m. Potential Contractor Conflict of Interest - FFRDC	(Russell/Bunting)	30 minutes
9:30 a.m. Licensing Support System/Pilot Project	(Altomare/Bender)	60 minutes
10:30a.m. 1st Demonstration/Break	(Altomare/Bender)	30 minutes
11:00a.m. Negotiated Rulemaking	(Cameron/Kalman)	60 minutes
12:00p.m. 2nd Demonstration/Lunch	(Altomare/Bender)	1½ hours
1:30 p.m. Allegations	(Bunting/Cameron)	15 minutes
1:45 p.m. Open Item Tracking/Pilot Project	(Altomare/Bender)	30 minutes
2:15 p.m. 3rd Demonstration/Break	(Altomare/Bender)	
3:15 p.m. Formal Open Item Resolution	(Linehan/Russell)	
3:30 p.m. Establishing Schedules and Consultation with DOE/States/Tribes	(Linehan)	30 minutes
3:45 p.m. Early Closure of Licensing Open Items	(Linehan)	30 minutes
4:15 p.m. State/Tribal Participation	(Russell)	30 minutes
4:45 p.m. 4th Demonstration	(Altomare/Bender)	

Wednesday - April 30

9:00 a.m. Opening Remarks	(Bunting/Russell)	15 minutes
9:15 a.m. Dept. of Energy Activities	(E. Burton)	30 minutes
9:45 a.m. Discussion by States/Tribes		2 hours
11:45a.m. Wrap-up/Closing Remarks		45 minutes
12:30p.m. Adjourn		
1:00 p.m. Demonstration of system with DOE NNWSI Project staff		

*Computer System will be available for demonstration and use all morning.

BRIEFING ON HLW STRATEGIC PLAN

- o GUIDANCE AND ISSUE IDENTIFICATION

- EA/SCP Reviews
- Meetings/Consultation
- Other Document/Data Reviews

- o FORMAL ISSUE RESOLUTION

- Prioritize Issues
- Establish Formal Resolution Process
- GTP's, STP's, or Rulemaking

- o INDEPENDENT LICENSING CAPABILITY

- Standard Review Plans
- Methods, Models and Codes

- o STREAMLINING LICENSING PROCESS

- Negotiated Rulemaking on HLW Records and Documents
- Open Items Tracking System
- Allegations Handling
- FFRDC (avoidance of conflict of interest)

BRIEFING ON FFRDC

o NEED FOR FFRDC

- Avoid Conflict of Interest
- Preclude Continued Erosion in Availability of HLW Contractors
- Long-Term Continuity in Technical Expertise

o SCOPE OF FFRDC WORK

- Waste Systems Engineering and Integration
- Long-Term Performance of Geologic Setting
- Long-Term Performance of Engineered Barrier System
- Performance of MRS and Repository During Operation
- Special Analytical Evaluations
- Transportation, Environmental Impacts, and Other Related NWPA

o STATUS

- Notices of Intent published in F.R. and C.B.D. March and April
- Draft Solicitation Package Made Available to Public for Comment
- Comment Period Closed 4-25-86
- Commission Vote to Publish RFP expected by June
- Expect to Have FFRDC In Operation by December 1986

DIVISION OF WASTE MANAGEMENT
PILOT PROJECT

PHIL ALTOMARE
AVI BENDER

LAS VEGAS, NEVADA

APRIL 29, 1986

WM PILOT PROJECT

- O LICENSING INFORMATION MANAGEMENT SYSTEM
 - FULL TEXT DOCUMENTS CAPTURE, STORAGE AND RETRIEVAL SYSTEM
- O OPEN-ITEM MANAGEMENT SYSTEM
 - IDENTIFYING AND TRACKING TO RESOLUTION CONCERNS/ISSUES RELATED TO LICENSING HIGH-LEVEL RADIOACTIVE WASTE REPOSITORIES

OVERVIEW
WHAT THE PILOT PROJECT SUPPORTS

STREAMLINING THE LICENSING PROCESS

I. LICENSING PROCESS

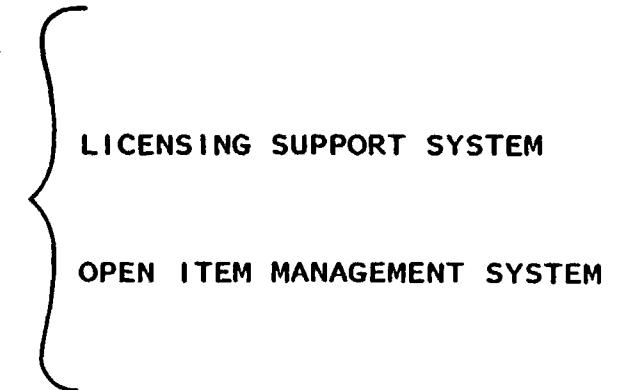
- MINIMIZE DISCOVERY TIME (NEGOTIATED RULEMAKING)

II. LICENSING DATABASE

- DOE/NRC AGREEMENT
- DOE LSS DEVELOPMENT
- BUILD DATABASE - ALL DOCUMENTS NECESSARY TO MAKE A LICENSING DECISION

III. CLOSING ISSUES

- GENERIC ISSUES IDENTIFICATION AND RESOLUTION
- SITE SPECIFIC ISSUE IDENTIFICATION AND RESOLUTION



DOE/NRC LICENSING SUPPORT SYSTEM AGREEMENT

- O DOE WILL BE RESPONSIBLE FOR DEVELOPING A LICENSING SUPPORT SYSTEM WITH FULL TEXT STORAGE AND RETRIEVAL TECHNIQUES
- O NRC WILL PARTICIPATE JOINTLY WITH DOE IN DEFINING THE REQUIREMENTS FOR AND PROCEDURES FOR OPERATION OF THE SYSTEM
- O THE LICENSING SUPPORT SYSTEM WILL BE USED BY DOE, NRC, STATES, INDIAN TRIBES AND OTHER PARTIES
- O THE GOAL IS TO MAKE DOCUMENTS AND OTHER INFORMATION PERTINENT TO REPOSITORY LICENSING AVAILABLE WELL BEFORE THE LICENSE APPLICATION IS SUBMITTED
- O A COORDINATING COMMITTEE HAS BEEN ESTABLISHED TO FACILITATE DEVELOPMENT OF THE LSS
- O DOE SUPPORTS THE NRC NEGOTIATED RULEMAKING
- O NRC WILL PROVIDE FOR DOE PARTICIPATION IN THE WM PILOT PROJECT

NRC'S VIEW OF THE LSS ROLE

- O LSS SHOULD PROVIDE OPTIMAL ACCESS TO LICENSING INFORMATION
- O LSS SHOULD PROVIDE MEANS TO OBLIGATE NORMAL COURSE OF DISCOVERY
- O LSS SHOULD BE THE COMPLETE DATABASE TO SUPPORT FINDINGS FOR ALL LICENSING DECISIONS

LSS COMPONENTS

- O PROCEDURES
- O PARTICIPANTS
- O INFORMATION
- O TECHNOLOGY
 - ENHANCE ACCESS
 - IMPROVE RECALL AND PRECISION

MAJOR SYSTEM DESIGN REQUIREMENTS

O RETRIEVABILITY

- MAXIMUM RECALL AND PRECISION
- ON-LINE QUERY OF FULL-TEXT AND DOCUMENT SURROGATE
- SYSTEM AVAILABLE AT REASONABLE COST FOR STATES, TRIBES, PUBLIC

O COMPLETENESS

- CONTAIN ALL DOCUMENTS RELEVANT TO LICENSING AND SUBJECT TO DISCOVERY AND FOIA
- ALL PARTIES TO LICENSING PROCESS SHOULD ADOPT COMMON PROCEDURES TO ASSURE COMPLETENESS OF LSS

O UNITARY DESIGN

- COMPREHENSIVE SYSTEM
- NOT A COLLECTION OF DISPARATE DATABASES
 - COMMON PROCEDURES (INDEXING, CAPTURE, EXEMPTION..)
 - COMMON CONTROLLED VOCABULARY AND THESAURUS
- CERTIFIED SUBMISSION OF INFORMATION TO LSS BY ALL PARTIES

SUMMARY OF APRIL 22
LICENSING SUPPORT SYSTEM INTERAGENCY COORDINATING COMMITTEE MEETING

- O CHARTER APPROVED
 - STATE AND INDIAN TRIBE ATTENDANCE AND PARTICIPATION ENCOURAGED
- O DOE LSS ACTION MEMO REVIEWED; HIGHLIGHTS
 - NRC, STATES, INDIAN TRIBES, AND OTHER PARTIES WILL BE USERS OF SYSTEM
 - DOCUMENT POLICY AND PROCEDURES INDICATING WHAT SHOULD BE INCLUDED MUST BE PREPARED AND REVIEWED
- O TOPICS FOR NEXT MEETING IN MID JUNE
 - DOE'S PROPOSED PROCEDURE AND SPECIFICATION FOR DOCUMENT COLLECTION
 - DOE'S PLANS FOR DEVELOPING OF A COMMON KEY WORD LIST
 - STANDARD APPROACH FOR INTERIM DOCUMENT COLLECTION

LICENSING SUPPORT SYSTEM

OBJECTIVES

PROGRESS

SYSTEM DESCRIPTION

PLANS

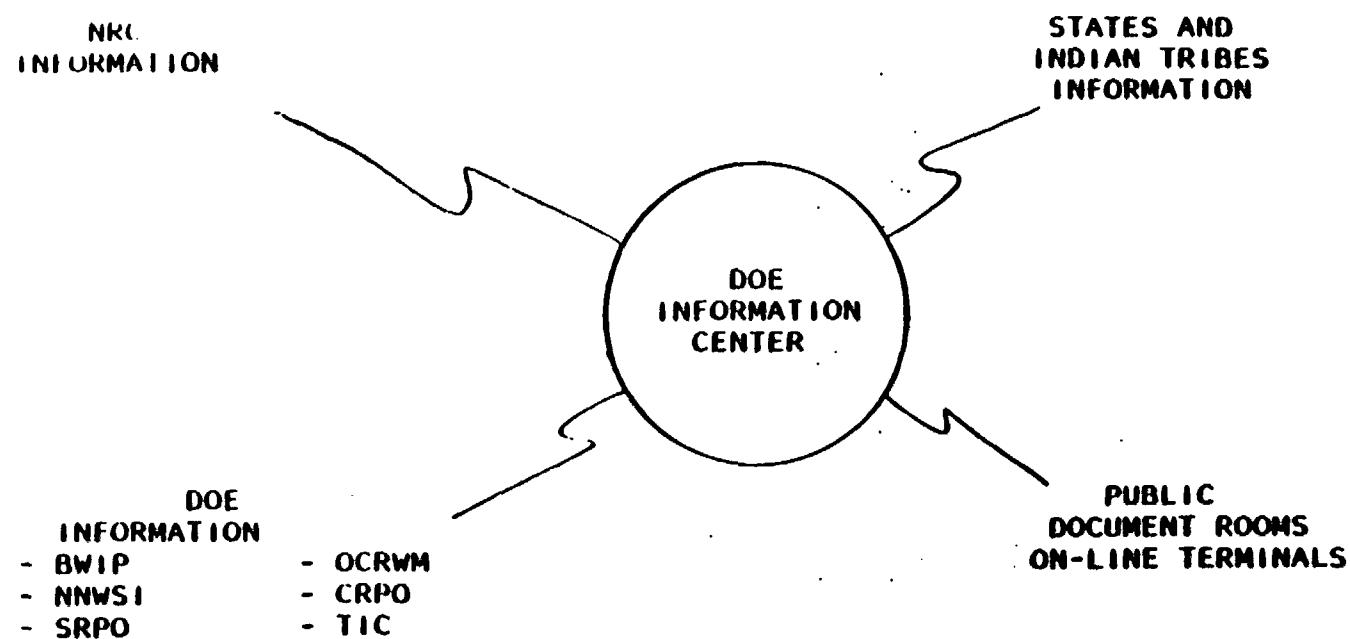
OBJECTIVES OF PILOT PROJECT

- O DEVELOP, TEST, AND IMPLEMENT AN OPEN-ITEM MANAGEMENT SYSTEM
- O DEFINE REQUIREMENTS FOR A LICENSING INFORMATION MANAGEMENT SYSTEM TO FULFILL NRC NEEDS AND SUPPORT A THREE-YEAR LICENSING HEARING
- O ESTABLISH AN INTERIM SYSTEM FOR RECORDS MANAGEMENT UNTIL A FINAL DOE SYSTEM IS AVAILABLE

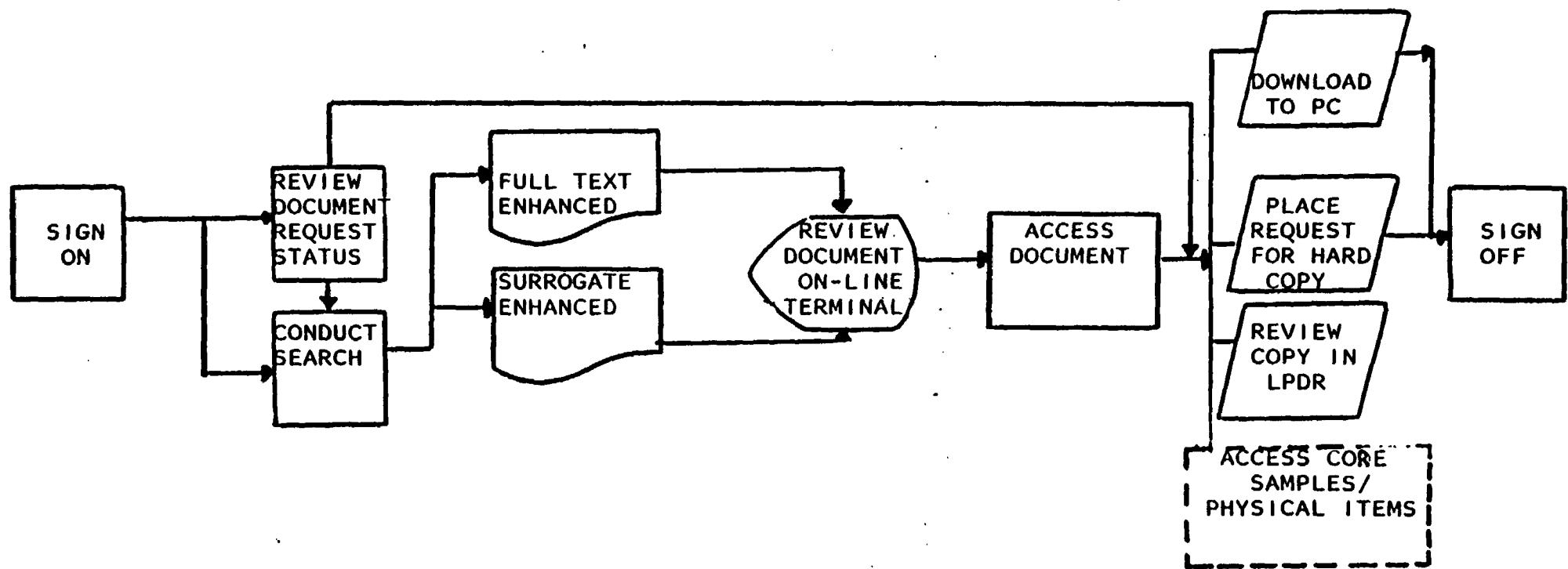
NRC LICENSING SUPPORT SYSTEM - PROGRESS

- O INITIATED EFFORT IN JULY OF '84
- O MET WITH DOE, STATES, AND INDIAN TRIBES - AUG-SEPT 1984
- O PILOT PROJECT STARTED JULY '85
- O AGREEMENT THAT DOE WILL DEVELOP SYSTEM - JANUARY '86 (RFP STATEMENT OF WORK IN PREPARATION)
- O NRC/DOE COORDINATING GROUP WITH STATES AND INDIAN TRIBE PARTICIPATION ESTABLISHED - FIRST MEETING - FEBRUARY '86
- O 2,300 PAGES OF TEXT IN LSS - 5,000 PAGES MORE BEING PREPARED FOR INCLUSION
- O DEMONSTRATIONS GIVEN OR PLANNED TO BE GIVEN TO NRC STAFF, DOE AND DOE CONTRACTORS, STATES AND INDIAN TRIBES
- O PILOT PROJECT HAS BEEN INCORPORATED INTO NRC DOCUMENT MANAGEMENT SYSTEM REPLACEMENT PLANNING
- O BEGINNING TO PROVIDE FOR USE OF LSS IN THE LICENSING HEARING

CONCEPTUAL ELECTRONIC INFORMATION NETWORK
(ALL LOCATIONS WITH ON-LINE ACCESS)



CONCEPTUAL LSS SEARCH AND RETRIEVAL



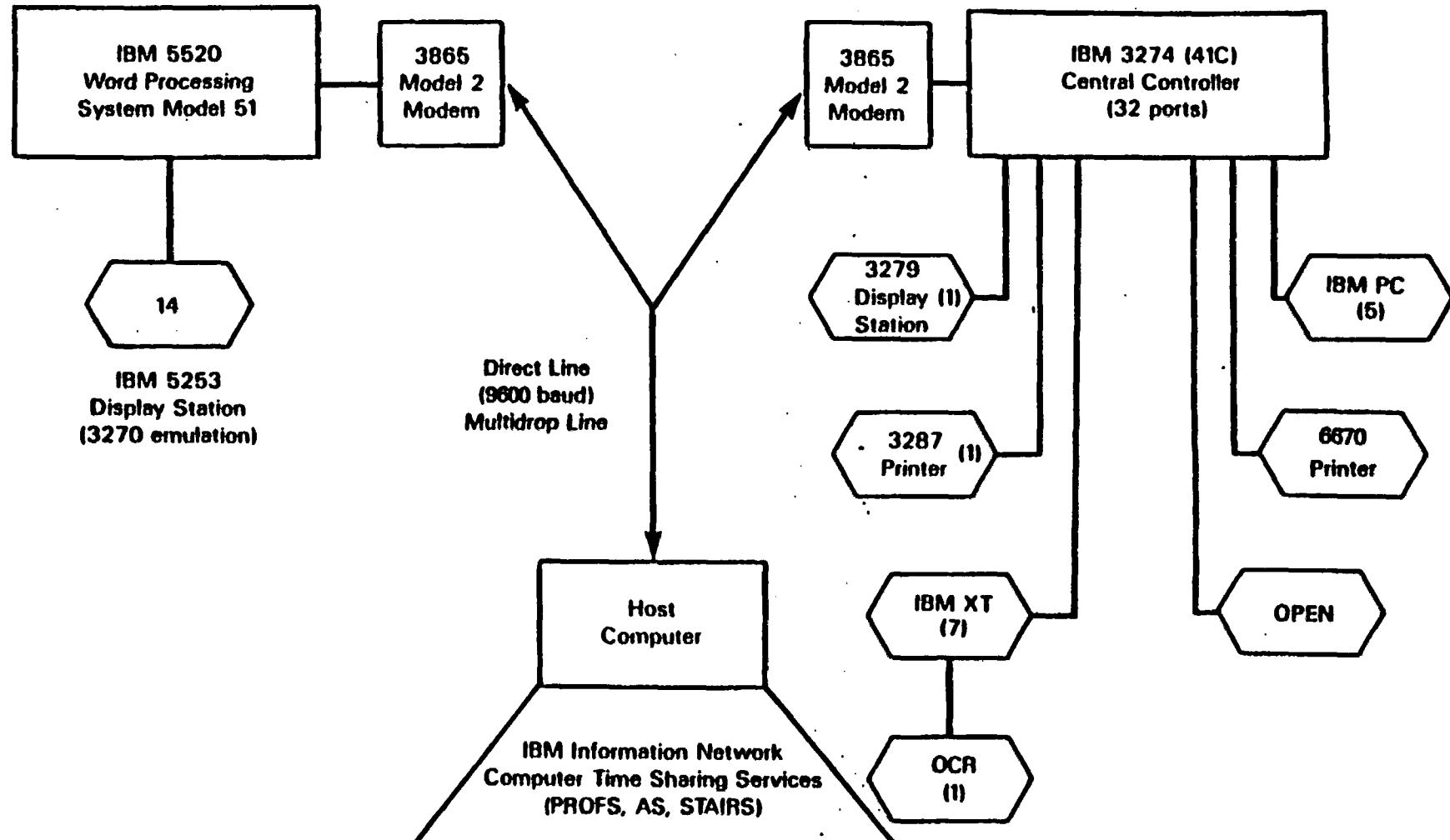
HEADER

(PARTIAL LIST)

ACCESSION NO:
DATE RECEIVED:
AUTHOR:
SUBJECT:
DOCUMENT TYPE:
SPONSOR:
CONTRACT NO:
KEY WORDS:
ABSTRACT:

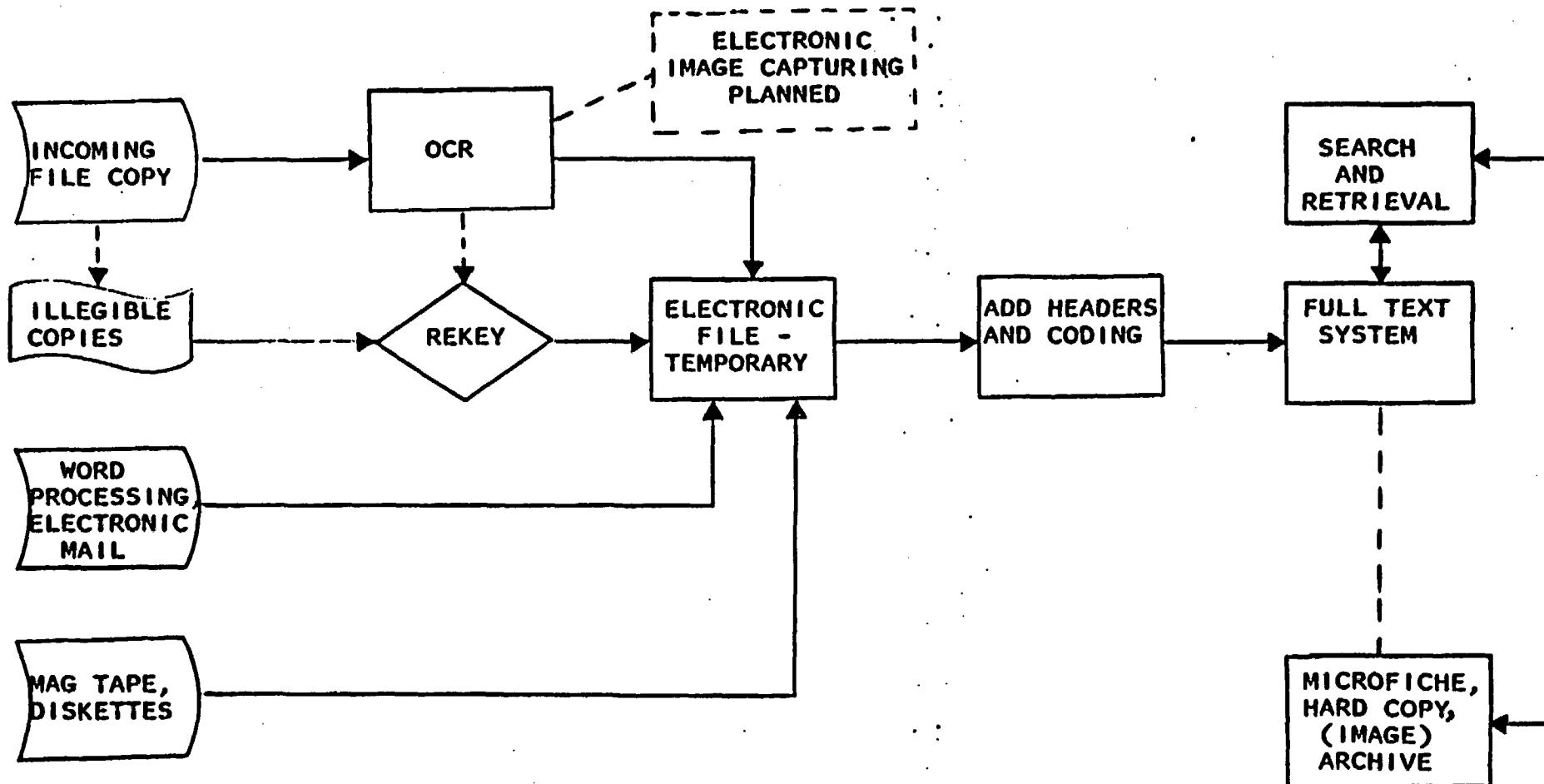
TEXT

(ACTUAL DOCUMENT FOLLOWS HERE)



Timesharing Equipment Configuration

DOCUMENT CAPTURE AND RETRIEVAL



OCR = OPTICAL CHARACTER READER

PROBLEM

HOW TO PROCESS COMPOUND DOCUMENTS FOR FULL TEXT SEARCH

ISSUES

ULTIMATE RETRIEVABILITY OF DOCUMENTS
MULTIPLE FORMATS/FONTS
IMAGES..MAPS..FIGURES..ENCLOSURES..
DOCUMENT SURROGATES

SOLUTION

USE SCANNERS WITH CHARACTER RECOGNITION SOFTWARE
STORE INFORMATION ON LASER DISCS
OBTAIN FUTURE INFORMATION IN STANDARDIZED ELECTRONIC FORM (TAPE/DISKETTES)

LICENSING SUPPORT SYSTEM - FUTURE PLANS

PILOT PROJECT

- O COMPLETE FULL-TEXT FILE RECORDS
- O DEVELOP ROUTINE WORD PROCESSOR DOCUMENT TRANSFER TO FULL TEXT STORAGE AND RETRIEVAL
- O INITIATE ELECTRONIC IMAGE/TEXT CAPTURE DEMONSTRATION
- O DEVELOP POLICIES AND PROCEDURES FOR DOCUMENT HANDLING, STORAGE, AND RETRIEVAL
- O SYSTEM EVALUATION REPORT
- O INITIATE INTERIM SYSTEM DOCUMENT CAPTURE AND RETRIEVAL (TRANSFER DOCUMENT DATA BASE TO DOE LSS WHEN AVAILABLE)

DOE, STATES, AND INDIAN TRIBES INTERACTION

- O CONTINUE DOE, NRC, STATES, INDIAN TRIBE COORDINATION
- O ESTABLISH PROGRAM FOR INTERIM DOCUMENT CAPTURE.
- O ESTABLISH APPROACH/STANDARDS FOR ELECTRONIC CAPTURE OF DOCUMENTS
 - SITE CHARACTERIZATION PLANS
 - CONTRACTOR REPORTS
 - FIELD OFFICE, STATES, AND INDIAN TRIBE INVOLVEMENT
- O WORK TOWARDS COMMON KEYWORDS INDEX/VOCABULARY, INCLUDE STATES AND INDIAN TRIBES

**OPEN ITEM MANAGEMENT. SYSTEM
(AFTERNOON SESSION)**

OPEN-ITEM MANAGEMENT SYSTEM

OBJECTIVE

PROGRESS

SYSTEM DESCRIPTION

PLANS

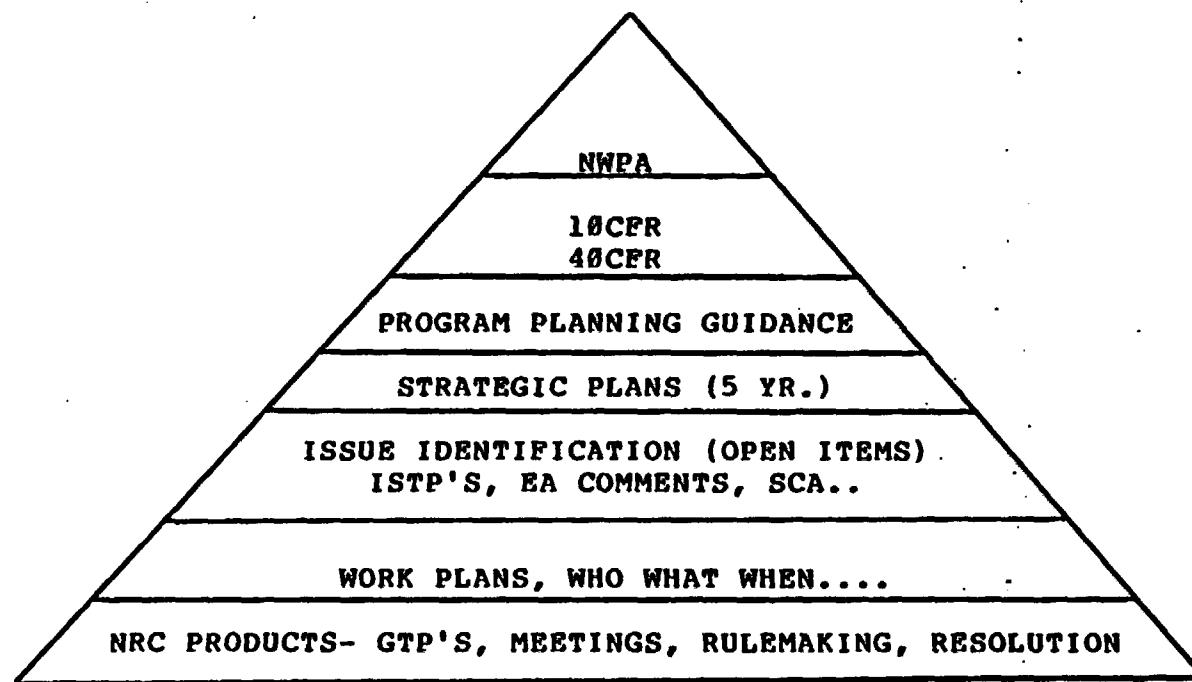
OPEN ITEM MANAGEMENT OBJECTIVES

- O PROACTIVE PROCESS TO IDENTIFY HLW OPEN ITEMS WHICH MUST BE RESOLVED
- O TRACK AND DOCUMENT STEPS TAKEN BY NRC/DOE TO IDENTIFY, AND RESOLVE LICENSING CONCERNS
- O MAKE CURRENT STATUS OF OPEN ITEM RESOLUTION ACCESSIBLE TO NRC, DOE, STATES, TRIBES, AND OTHER ORGANIZATIONS
- O LINK TO THE LICENSING SUPPORT SYSTEM

OPEN ITEM MANAGEMENT - PROGRESS

- O INITIATED EFFORT - JULY OF '84
- O MET WITH DOE, STATES, AND TRIBES - AUG-SEPT '84
- O SYSTEM DESIGN SPECS - APRIL 1985
- O PROTOTYPE SYSTEM (PC-DBASE III) AVAILABLE - OCTOBER 1985
- O TASK FORCE ESTABLISHED TO IDENTIFY OPEN ITEMS - OCTOBER 1985
- O DRAFT SET IDENTIFIED FOR NNWSI IN WASTE PACKAGE AND SEISMOLOGY - FEBRUARY 1986
- O DEMONSTRATIONS GIVEN TO DOE, NRC, STATES, TRIBES, AND OTHERS

HOW DOES THE TRACKING SYSTEM RELATE TO CURRENT PLANNING



HIGH LEVEL WASTE INFORMATION PLANNING PYRAMID

OPEN ITEM TRACKING SYSTEM - DESCRIPTION

- O COMPUTER PROGRAM DESIGNED TO FACILITATE RESOLUTION, LINK TO LSS, PROVIDE PAPER (DECISION) TRAIL
- O INFORMATION FIELDS
 - OPEN ITEM DESCRIPTIONS
 - BACKGROUND
 - STATUS
 - MILESTONES
 - KEY WORDS (FUTURE LINK WITH LSS)
 - CONTACT POINT
 - WORK PLANS
 - REGULATION REFERENCES
 - REFERENCES
 - WHEN/WHERE FIRST IDENTIFIED
 - SITE

DRAFTOPEN ITEM SYSTEM REPORTWASTE PACKAGEOPEN ITEM:

Quantification of partially breached fuel cladding's contribution as a barrier to reduce radionuclide releases.

INITIALIDENTIFICATION:

NRC Comments on DOE Draft Environmental Assessment for the Yucca Mountain Site, 6-119.

BACKGROUND:

Based on the dissolution rate of irradiated, declad fuel, the NNWSI (LLNL) expects that it will be necessary to utilize a barrier, in addition to the fuel itself, to comply with the release rate requirement of Part 60. It is held that the Zircaloy cladding both intact and containing minor defects, can afford the reduction in radionuclide release rate. Impact of intact or partially breached fuel cladding on radionuclide release and transport is a complex process which, at this time, is not well understood.

KEY WORDS:

Zircaloy cladding; radionuclide release; spent fuel

STATUS:

(11/7/85) NNWSI/LLNL is examining the radionuclide releases from declad spent fuel and clad spent fuel containing simulated defects, i.e., laser induced pinholes and machined effects. The work is being performed in three stages; the completed Series 1 tests used deionized water, the Series 2 tests are near completion and have used J-13 well water, while Series 3, which is yet to start, will be performed utilizing J-13 water at an elevated temperature.

MILESTONES:

NRC/NNWSI Spent Fuel Meeting - Spring 1986

REFERENCES:

Wilson, C.H., "Results from NNWSI Series 1 Spent Fuel Leach Tests," Hanford Engineering Development Laboratory, HEDL-TME 84-30, May 1985.

Wilson, C.H., "Test Plan for Series 2 Spent Fuel Cladding Containment Credit Tests," Hanford Engineering Development Laboratory, HEDL-TC-2353-3, October 1984.

DEA Comments, 6-119

PREPARED BY: T. Jungling/WMEG

SITE: NNWSI

RP PROJECT OFFICER: K. Stablein/WMRP

REGULATION: 10 CFR 60.113 (a)(1)(ii)(B)

OPEN ITEM MANAGEMENT SYSTEM - PLANS

- O INTERNAL AGREEMENT ON SYSTEM APPROACH, LEVEL OF DETAIL
- O PLACE SYSTEM ON MAINFRAME, LINKAGE TO LSS
- O FULL IMPLEMENTATION - INCLUDE OPEN ITEMS FOR ALL SITES

NEGOTIATED RULEMAKING

DEVELOPMENT OF A RULE ON THE SUBMISSION AND MANAGEMENT
OF RECORDS AND DOCUMENTS RELATED TO THE LICENSING OF A GEOLOGIC REPOSITORY
FOR THE DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

PURPOSE OF PAPER

TO INFORM THE COMMISSION OF STAFF INTENT TO USE
NEGOTIATED RULEMAKING TO DEVELOP THE PROPOSED CHANGES
TO 10 CFR PART 2 FOR HLW.

PROBLEM

NRC ESTIMATED AT LEAST 42 MONTHS FOR LICENSE REVIEW

THE NWPA PROVIDES 36 MONTHS (WITH 12 MONTH EXTENSION
FOR CAUSE)

- CHAIRMAN PALLADINO TO CONGRESS
- DOE PROJECT DECISION SCHEDULE USES 27 MONTHS

SOLUTION: STREAMLINE LICENSING PROCESS

I. LICENSING PROCESS

- A. MINIMIZE DISCOVERY TIME (NEGOTIATED RULEMAKING)
- B. MINIMIZE GENERATION OF NEW RECORDS
- C. TAILOR SYSTEM FOR FEDERAL APPLICANT AND PRE-APPLICATION PROCESS
 - 1. ALLEGATIONS
 - 2. INVESTIGATION
 - 3. ENFORCEMENT
- D. OTHER RULEMAKINGS
- E. TAILOR HEARING PROCESS

II. LICENSING DATA BASE

- A. WM PILOT PROGRAM
- B. DOE/NRC AGREEMENT
- C. DOE LSS DEVELOPMENT

III. CLOSING ISSUES

- A. GENERIC ISSUE IDENTIFICATION AND RESOLUTION
 - 1. OPEN ITEM MANAGEMENT SYSTEM
 - 2. GUIDANCE TO DOE
 - 3. COMPLIANCE METHODOLOGY FOR 10 CFR PART 60
 - 4. QUALITY ASSURANCE
- B. SITE SPECIFIC ISSUE IDENTIFICATION AND RESOLUTION
 - 1. OPEN ITEM MANAGEMENT SYSTEM
 - 2. WORKSHOPS/DATA REVIEW (DOE, STATES/TRIBES)
 - 3. REVIEW OF DOE PRE-APPLICATION SUBMISSIONS

OBJECTIVE OF RULE

- REQUIRES
 - APPLICATION AND ALL SUPPORTING RECORDS ELECTRONIC FORMAT
 - ALL PARTIES MUST SUBMIT RELEVANT DATA TO SYSTEM IN A TIMELY MANNER
 - ALL PARTIES PROVIDED ACCESS (MINIMAL COST)
 - PERIODIC WRITTEN CERTIFICATION
 - SANCTIONS

ADVANTAGES OF NEGOTIATED RULEMAKING

BRINGS ALL INTERESTED PARTIES TOGETHER AT OUTSET

- SHARED POINTS OF VIEW**
- COMPREHENSIVE TREATMENT OF ISSUES**
- EFFICIENCY THROUGH DIRECT INTERACTION**
- COMMENTS ARE CONSTRUCTIVE RATHER THAN CONFRONTATIONAL**

INCREASES ACCEPTABILITY AND ENFORCEABILITY OF THE RULE

SHORTER FORMAL COMMENT PERIOD

TIME AND DOLLARS SAVED

EVEN NO NEGOTIATED CONSENSUS RESULTS IN MORE ACCEPTABLE FINAL RULE

DISADVANTAGES OF NEGOTIATED RULEMAKING

LACK OF CONSENSUS:

- DELAY**
- COST**

OUTCOME

THE EDO HAS DIRECTED STAFF TO DEVELOP THE FEDERAL REGISTER NOTICE AND RELATED DOCUMENTS TO INITIATE NEGOTIATED RULEMAKING PROCESS TO DEVELOP CHANGES TO 10 CFR PART 2 FOR HLW.

COMISSION TO RECEIVE DRAFT NOTICE OF INTENT BY SEPTEMBER 1, 1986.

EARLY IDENTIFICATION AND CLOSURE OF LICENSING OPEN ITEMS

APRIL 29, 1986

JOHN LINEHAN
BRIAN THOMAS

FIVE YEAR PLAN - HIGH LEVEL WASTE REPOSITORY PROGRAM

O GOALS AND OBJECTIVES.

- AGGRESSIVE PROGRAM FOCUSED ON ACTIVITIES NECESSARY TO PROVIDE SUFFICIENT LICENSING GUIDANCE TO DOE AND SUFFICIENT INTERACTION WITH DOE, STATES, INDIAN TRIBES, AND OTHER AGENCIES IN ORDER TO IDENTIFY LICENSING OPEN ITEMS AND BEGIN THE PROCESS OF RESOLVING THEM.
- AGGRESSIVE PROGRAM THAT STRIVES TO ASSURE A FORMAL RESOLUTION OF LICENSING OPEN ITEMS PRIOR TO THE LICENSING HEARING, TO THE EXTENT PRACTICABLE.
- DEVELOP AN INDEPENDENT TECHNICAL CAPABILITY TO REVIEW DOE'S LICENSE APPLICATION WITHIN A 3-4 YEAR TIME FRAME.
- IDENTIFY AND ELIMINATE, TO THE EXTENT POSSIBLE, IMPEDIMENTS TO MEETING NRC'S STATUTORY TIME FRAME FOR LICENSE PROCEEDING AND IDENTIFY AND IMPLEMENT EFFICIENCIES IN THE LICENSING PROCESS.

KEY ELEMENTS OF THE FIVE YEAR PLANNING APPROACH

- o PROACTIVE AS OPPOSED TO REACTIVE.
- o FOCUS THE PROGRAM ON THE KEY LICENSING DECISIONS THAT MUST BE MADE WITH RESPECT TO 10 CFR 60 PERFORMANCE OBJECTIVES AND SITING AND DESIGN CRITERIA.
- o OPEN AND DOCUMENTED PROCESS FOR DEVELOPMENT OF GUIDNACE AND EARLY IDENTIFICATION, PRIORITIZATION AND RESOLUTION OF OPEN ITEMS..
- o PROVISION FOR EARLY AND FULL INVOLVEMENT WITH DOE, STATES, INDIAN TRIBES.
- o DEVELOPMENT OF A FORMAL MECHANISM FOR IMPLEMENTATION.

DEVELOP SYSTEMATIC APPROACH FOR DEVELOPMENT OF GUIDANCE
AND FOCUSING PROGRAM ON EARLY IDENTIFICATION AND CLOSURE OF OPEN ITEMS

- o OPEN ITEM IDENTIFICATION AND PRIORITIZATION.
- o DEVELOP MECHANISM TO FOCUS DEVELOPMENT OF GUIDANCE AND NRC/DOE INTERACTIONS
ON FORMAL CLOSURE OF OPEN ITEMS.

OPEN ITEM IDENTIFICATION AND PRIORITIZATION

- o GENERIC COMPLIANCE DEMONSTRATION ISSUES
- o SITE SPECIFIC OPEN ITEMS
- o CONSULT WITH DOE, STATES, AND TRIBES
- o PRIORITIZATION
 - DETERMINE WHERE GUIDANCE AND WORK ON OPEN ITEM RESOLUTION IS MOST NEEDED
 - MOST CONTENTIOUS OPEN ITEMS
 - CRITICAL TO EARLY PHASES OF PROGRAM
 - LONG-LEAD TIME ITEMS
 - TIMING WITH RESPECT TO OVERALL PROGRAM SCHEDULES

MECHANISMS FOR FORMAL CLOSURE

- o FOCUS NRC/DOE INTERACTIONS ON RESOLUTION OF OPEN ITEMS
 - AGREE ON CONSULTATION POINTS
DOE, STATES, AND TRIBES
 - DEVELOP AGENDAS THAT FOCUS ON DEVELOPMENT OF APPROACHES FOR RESOLVING ISSUES
 - EFFECTIVE STATE AND TRIBAL PARTICIPATION
 - MINUTES THAT REFLECT PROGRESS TOWARDS OPEN ITEM RESOLUTION, AGREEMENTS, DISAGREEMENTS, AND IDENTIFY ACTIVITIES NEEDED TO ACHIEVE RESOLUTION

MECHANISMS FOR FORMAL CLOSURE (CONTINUED)

- o FORMAL AND DOCUMENTED TECHNICAL POSITIONS.
 - MECHANISM TO ESTABLISH AND DOCUMENT CONSENSUS ON AGREEMENTS REACHED AT MEETINGS
 - VENTILATE POSITIONS TO ESTABLISH TECHNICAL CONSENSUS
 - PEER REVIEW
 - PUBLIC COMMENT
 - TARGET GROUPS
 - DOCUMENT CONSENSUS/AGREEMENTS IN FINAL TECHNICAL POSITIONS
 - DOE, STATES, AND TRIBES
 - TYPES OF TECHNICAL POSITIONS
 - STRATEGIES - DEVELOP CRISP BASELINE/GROUND RULES.
E.G., HYDROLOGIC TESTING
 - METHODOLOGIES - IMPLEMENTATION OF EPA STANDARD.

MECHANISMS FOR FORMAL CLOSURE (CONTINUED)

O RULEMAKING

- IDENTIFY TOPICS FOR RULEMAKING

- CRITERIA

- RIPE, WELL VENTILATED, MATURE
MOST CONTENTIOUS
LONG LEAD TIME

- POSSIBLE TOPICS

- DISTURBED ZONE
METHODOLOGY FOR IMPLEMENTATION OF EPA STANDARD

DEVELOPMENT OF INDEPENDENT TECHNICAL REVIEW CAPABILITY

- o ESTABLISH REVIEW CRITERIA AND REVIEW APPROACH
 - FOR EACH COMPLIANCE DEMONSTRATION ISSUE
 - FOR VARIOUS PHASES OF THE PROGRAM
 - SCP
 - SCP UPDATES
 - LICENSE APPLICATION
- o MODELING STRATEGY DOCUMENT

GENERIC TECHNICAL POSITIONS
AS OF 04/24/86

		<u>DRAFT</u>	<u>FINAL</u>
0	GTP ON PERFORMANCE CONFIRMATION	TBD	TBD
0	CONFIGURATION MANAGEMENT FOR CONCEPTUAL DESIGN	TBD	TBD
0	QUALIFICATION OF EXISTING DATA	TBD	TBD
0	PEER REVIEW	TBD	TBD
0	GTP ON DOCUMENTATION OF COMPUTER CODES	---	6/83
0	MODELING STRATEGY DOCUMENT FOR HLW PERFORMANCE ASSESSMENT	---	7/84
0	GTP ON SOLUBILITY	---	11/84
0	GTP ON BOREHOLE AND SHAFT SEALS	6/84	2/86
0	LICENSING ASSESSMENT METHODOLOGY FOR HLW GEOLOGIC REPOSITORIES	7/84	5/86
0	GTP ON PERFORMANCE ASSESSMENT	8/84	4/86
0	GTP ON IN-SITU TESTING DURING SITE CHARACTERIZATION	10/84	12/85
0	GTP ON WASTE PACKAGE RELIABILITY	11/84	12/85
0	GTP ON DESIGN INFORMATION NEEDS IN SITE CHARACTERIZATION PLANS	4/85	12/85
0	GTP ON SORPTION	1/86	'86
0	GTP ON INTERPRETATION AND IDENTIFICATION OF DISTURBED ZONE	7/86	TBD
0	GTP ON GROUNDWATER TRAVEL TIME AND DISTURBED ZONE	7/86	'86
0	GTP ON STRUCTURES, SYSTEMS AND COMPONENTS IMPORTANT TO SAFETY AND BARRIERS IMPORTANT TO WASTE ISOLATION	7/86	'87
0	GTP ON SEISMO-TECTONIC EVALUATION METHODOLOGY	8/86	'87
0	TECHNICAL POSITIONS ON SELECTED QA IMPLEMENTATION ISSUES	2-9/86	TBD

86/07/24

ATTENDEES AT NRC MEETING WITH STATE/TRIBAL REPRESENTATIVES
IN HIGH-LEVEL WASTE PROGRAM
LAS VEGAS, NEVADA, APRIL 29-30, 1986

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86/07/24

ADDITIONAL ADDRESSEES FOR MEETING MINUTES OF
NRC MEETING WITH STATE/TRIBAL REPRESENTATIVES
IN HIGH-LEVEL WASTE PROGRAM
LAS VEGAS, NEVADA, APRIL 29-30, 1986

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NRC MEETING WITH STATE/TRIBAL REPRESENTATIVES
IN LAS VEGAS, NEVADA, 4/29-30/86

DAY 1 - 4/29/86
SUMMARY OF NRC PRESENTATIONS

FIVE-YEAR PLAN FOR NRC HIGH-LEVEL WASTE REPOSITORY PROGRAM (Joseph O. Bunting)

Mr. Joseph Bunting, Chief, Policy and Program Control Branch, Division of Waste Management, briefly discussed the division's Five-Year Plan and noted that there are four goals to be achieved:

- o Provide guidance to DOE in the form of regulatory guides and regulations and identify issues.
- o Develop an independent licensing capability; standard review plans, methods, models and codes.
- o Work toward the resolution of issues prior to the licensing hearing to the extent possible.
- o Streamline the licensing process.

It was noted that formal issue resolution and streamlining the licensing process relates to the NWPA requirement to reach a licensing decision within three years with a 12-month extension for good cause (the NRC's most optimistic estimate was 42 months). Both of these goals would need the involvement of the states and Indian tribes. The NRC will be trying to develop technical consensus on both generic and site-specific issues to the extent possible prior to receipt of the license application. It will be necessary to work out a process by which the NRC staff can find out state and tribal issues on technical positions and reach a point of resolution prior to the receipt of the license application. The NRC has not, however, come to any conclusion as to what would be a satisfactory method for issue resolution. Each of the following activities to be discussed in this meeting have been put in place to further the goal of streamlining the licensing process.

POTENTIAL CONTRACTOR CONFLICT OF INTEREST - FFRDC (Joseph O. Bunting and Catherine Russell)

Mr. Bunting and Ms. Russell gave a brief presentation on the NRC efforts to establish a Federally Funded Research and Development Center (FFRDC) to assure long-term continuity in technical expertise in NRC's high-level waste (HLW) management program. After the Nuclear Waste Policy Act of 1982 (NWPA) was passed, NRC discovered that many of its contractors in the HLW program were also working for DOE (the repository licensee) and the states and Indian tribes (parties in the licensing proceeding). We cannot preclude contractors from severing ties with NRC and working for DOE--thus threatening long-term continuity in NRC's contractor program. In order to avoid conflict of interest, either real or perceived, during the licensing process, there was a need for NRC to look at other alternatives for long-term technical support. After reviewing all options, it was determined that agency establishment of an FFRDC for the HLW management program was the preferred option. An FFRDC would assure long-term continuity in technical expertise as well as avoid conflict of interest. The FFRDC would be precluded from performing any work in the HLW management area for other parties to the HLW licensing process and would commit to work exclusively for NRC for the length of the program. The Commission has supported issuance of a Notice of Intent to establish an FFRDC. Three notices of intent were published in the Federal Register and Commerce Business Daily, and a draft solicitation package was made available for public comment. The comment period closed on 4/25/86, and the Commission vote to approve issuance of the Request for Proposal was expected by June 1986 (latest estimate is end of July 1986). NRC anticipated having the FFRDC in operation by December 1986 (latest estimate is February 1987). NRC has begun development of a Phase-In Plan for transference of needed high-level waste technical assistance from existing contracts to the FFRDC.

LICENSING SUPPORT SYSTEM (LSS)/PILOT PROJECT/OPEN ITEM MANAGEMENT SYSTEM
(Philip Altomare and Avi Bender)

A. Licensing Support System (LSS)/Pilot Project

Messrs. Altomare and Bender provided an overview and a detailed description of the pilot project and recent activities of the LSS Interagency Coordinating Committee (ICC). The ICC was formed recently to provide guidance to DOE on development of their LSS. The purpose of the pilot project is to define the nature and scope of a system needed to support NRC's three-year license review requirements. This includes addressing both procedural and technological aspects of a full text storage and retrieval system. Demonstrations of the document retrieval system were given during the meeting breaks.

Several questions were raised by state and Indian tribe representatives concerning the nature of the information in the system, and access to the data. The staff noted that the LSS would provide access to documents and information. As to specific remote site capabilities to "down-load" the information onto diskettes and equipment compatibility, the staff noted that the ICC would be addressing these questions and noted that continued state and tribal input to the ICC was important.

A concern was raised on why the states and tribes were not involved in the process of establishing the (ICC). The staff noted that the ICC was specifically established to provide a mechanism to encourage public participation. The intent of the ICC is to involve states, Indian tribes, and other interested parties in defining the LSS requirements. With respect to document storage and access, a question was raised about whether the contributors to the data base would have a "no-access file". The staff noted that all contributors should have a no-access file for any of their privileged information.

One state representative raised a concern about an interim approach for collecting documents produced by DOE. The staff noted that the next meeting of the ICC will address this problem. Also, in the April 22, 1986 meeting of the ICC, DOE suggested that they would collect full text of documents issued since the passage of the NWPA.

Future Plans

The major thrust of our short-term activities will be to move toward an interim system for document storage and retrieval until a final DOE system is developed at which time the documents will be loaded into the DOE system. Document handling procedures will be developed through the ICC.

B. Open Item Management System

The staff provided an overview and detailed description of the NRC Open Item Management System. The purpose of this system is to establish a process for the identification, tracking, and resolution of HLW open items. A prototype of the system has been developed on a microcomputer-based software package for demonstration purposes. The process of identifying open items is ongoing, and efforts are underway at NRC to reach agreement on the level of detail for tracking.

Future Plans

The Open Item Management System will be converted to a mainframe so that it can be linked to the LSS. The initial demonstration of waste package and seismology open items for NNWSI will be expanded to other disciplines and other sites.

NEGOTIATED RULEMAKING (F.X. Cameron and Ken Kalman)

The staff presentation addressed the major issues involved in the negotiated rulemaking process. This included the role of the convenor and facilitator for the negotiation, the identification and selection of participants in the negotiation, the role of the agency, how consensus is defined, and the steps in the negotiation process. The experience of other agencies with negotiated rulemaking was also discussed.

Although the workshop participants asked several questions about the negotiated rulemaking proposal, their major concerns focused on the relationship of the Interagency Coordinating Committee (ICC) to the negotiated rule committee, funding for participation in the negotiation, selection of participants, use of the term "negotiation," the authority of the NRC to require the parties to the licensing proceeding to submit data to the LSS, and substantive issues related to the rulemaking, e.g., the entry of privileged data, sanctions for not entering data.

In terms of the ICC, the state/tribal concern was that the ICC would make decisions on the technical criteria for the LSS and consequently would preempt the negotiating committee from making decisions on important policy issues. In response, the staff noted that it was necessary to initiate the Coordinating Committee to ensure a DOE commitment to develop the LSS and to begin the timely evaluation of the design of the LSS. Furthermore, the ICC is primarily concerned with the technical details of design of the LSS, as opposed to the use of the LSS in licensing, which is the concern of the negotiated rulemaking. Nevertheless, there are important areas of overlap, primarily in the development of protocols on the type of information that will go into the system. On these issues, the ICC will be developing background information for use by the negotiating committee in reaching the final decision on these protocols. The Texas representative proposed that the states and tribes get together to discuss their role in the ICC process and to attempt to develop a coherent position on LSS issues for input to the ICC. The staff indicated that this approach could be a useful method for the ICC to obtain state and tribal comments on the LSS, but emphasized that the NRC is willing and prepared to accept state and tribal comments on an individual basis.

Another major concern of workshop participants was the issue of funding for state and tribal participants in the negotiating committee. The staff offered the opinion that state and tribal participation in the negotiated rulemaking would seem to be an appropriate use of the funds provided under §116 and 118 of the NWPA.

A third major concern was how the NRC planned to select the participants for the negotiating committee. Several participants advised that the NRC should avoid, if possible, the consolidation of several interests under the representation of one organization, i.e., several states or tribes being

represented by one state or tribe. It was also noted that some states or tribes may not participate because of staff and resource priorities, but would feel that their interests were adequately represented by other participants on the negotiating committee. The staff stated that it had identified the interests that would be affected by the rulemaking (first and second repository states and tribes, states and tribes that would be affected by HLW transportation, public interest groups at a national and site-specific level, industry, and rate commission representatives), but had not yet identified the individual participants. Furthermore, the staff was mindful of the need to ensure that organizations with significantly different interests were not consolidated under one organization. The staff also noted the facilitator for the negotiation would assist in the selection process.

Several participants at the workshop stated that the use of the term "negotiation" carried a negative political perception of giving something away and requested that the NRC attempt to find a new label for this process. The staff pointed out that negotiated rulemaking enhanced the ability of the states and tribes to influence the rulemaking process and that the term "negotiated rulemaking" was an accepted label used by the Administrative Conference of the U.S. and by the other agencies that had conducted negotiated rulemakings. However, the staff stated that it would explore the possibility and practicality of using a different label for the process.

Several questions addressed the authority of the NRC to require states and tribes to submit data to the LSS. The staff noted that the NRC has the authority to establish the rules for participation in its licensing proceedings. Furthermore, the development of the LSS should be beneficial to all parties to the proceeding, as well as organizations that are not formal parties, and therefore provides an incentive for states and tribes to participate in the LSS.

A number of workshop participants asked questions on the substantive issues to be discussed in the negotiated rulemaking, e.g., the handling of privileged data, and possible sanctions for failure to enter data into the system. The staff discussed these issues generally but noted that some of these issues would be addressed in a preliminary manner by the ICC before the beginning of negotiations. In addition, the Federal Register Notice on the Commission's intent to use a negotiated rulemaking would specifically identify the major issues to be addressed in the rulemaking. These issues, as well as other elements of the negotiated rulemaking, would be open for public comment before the convening of the negotiating group. Furthermore, the staff noted that the negotiating committee would have the flexibility to revise these issues if necessary to effectively carry out the negotiating process.

In light of the state/tribal meeting, the following issues require prompt action by the staff:

- o the selection of the facilitator
- o identification of the potential participants to the negotiations
- o assurance from DOE that the §116 and §118 funds will be available for state and tribal participation in the negotiating committee
- o a final decision on the issue of funding any participants who are not receiving funds from DOE
- o exploration of alternatives for assuring, to the extent practicable, that data is placed in the LSS before the license application is filed
- o analysis of whether it is advisable to select a new label for the negotiating process

EARLY IDENTIFICATION AND CLOSURE OF LICENSING OPEN ITEMS (John J. Linehan)

Overview

The staff gave a presentation on "Early Identification and Closure of Licensing Open Items" focusing on the major goals and objectives of the Five-Year Plan related to the development of guidance, identification, prioritization, and resolution of open items. It also focused on systematic approaches toward achieving these goals and objectives. This approach was conveyed as an effort toward issue resolution in a pro-active manner as opposed to reactive, with the main intent of obtaining technical consensus through a very open process. Also conveyed was that there were no final conclusions on mechanisms for achieving this at the present time.

Open item identification and prioritization and development of a mechanism to focus development of guidance and NRC/DOE interactions on formal closure of open items were the focus of the proposed systematic approaches discussed. Attention was drawn to consultation with DOE, states, and tribes during the identification and prioritization of generic compliance demonstration issues as well as site-specific open items. Also, reference was made to some of the proposed criteria being considered for prioritization.

The discussion on mechanisms for formal closure elaborated on the need for better focusing of NRC/DOE interactions and consultations on open item resolution, more widespread ventilation of open items, documentation of consensus with DOE, states, and tribes through technical positions and legal resolution through rulemaking. The final discussion related to the NRC's development of technical review capabilities needed to independently conduct quality reviews during different project stages such as the Site Characterization Plan (SCP), SCP updates, and licensing. In this case, the modeling strategy document was given as an example.

Major Areas of Concern/Staff Responses

Several favorable comments were vocalized and stated in the meeting questionnaire on the valuable, purposeful, and informative aspects of the presentation. However, there were some state/tribal questions and concerns that need to be considered in further development of our strategy for open item resolution.

Our presentation cited different types of technical positions as mechanisms for formal closure of open items. The types were (1) strategies - development of crisp baseline ground rules such as strategy for hydrologic stress testing and (2) methodologies - implementation of the EPA standard.

Concern: How appropriate is compliance with the EPA standard as an open item to resolve early? How appropriate is it to foreclose similar substantive

questions prior to the licensing hearing? It was quite clear that the states and tribes were concerned that the NRC will make an actual judgment prior to the Licensing Board deciding on such open items and that these types of factual determinations should be left for the Licensing Board.

Staff Response: The staff clarified that any development of a technical position on the EPA standard would be related to the generic methodology used to show compliance with the standard rather than using a technical position as a vehicle to make a final determination on compliance for a specific site. The staff also recognized that there may be open items that are better-off left unresolved until licensing and allowing the adjudicative system resolve those open items, and will consider determining the criteria for prioritization of open items for formal resolution. Concerns of this kind are why the NRC is attempting to draw out the input of DOE, states, and tribes in order to decide where closure comes about.

The proposed criteria for rulemaking on open items was presented as ripe, well ventilated, mature, most contentious, and long-lead time.

Concern: What is the appropriateness for rulemaking to close out open items where the concerned parties really want the open items to go through the adjudicatory process of the hearing? Also, are legislative solutions to really contentious open items less likely to satisfy the aggrieved parties?

Staff Response: There are no set plans on what would be appropriate to take to final closure at this time, except that we are seeking to develop mechanisms with input from DOE, states, and tribes on what would be an appropriate course to take. One of the prime candidates for final closure discussed was closing out on a methodology to show compliance with the EPA standard. The staff also pointed out that the rulemaking process allows for public comment and input.

General Conclusion/Action Items

In general, there were several questions that need to be considered as we further develop this approach. We believe that these questions will be resolved as the proposed process begins to evolve. For example, once open item identification and prioritization is completed, we will then be able to identify specific courses of action.

In order to expedite open item identification and prioritization which also is a major step toward implementing the open item tracking and resolution system, the following actions are recommended by the staff to be taken as early as possible:

- o Establish a complete list of open items
- o Establish a criteria for types of open items that should be resolved early and open items that will remain open until licensing
- o Establish criteria for what methods of resolution are appropriate for various types of open items

DAY 2 - 4/30/86
SUMMARY OF STATE/TRIBAL PRESENTATIONS

The second day of the meeting began with an opportunity for each state/tribal representative to give a brief presentation about their individual HLW programs. Following are some brief excerpts from these presentations.

FIRST REPOSITORY PROGRAM STATES/TRIBES

Washington (Don Provost) - In addition to the repository program, Washington State also has great problems with defense waste on the Hanford Reservation, as well as the accumulation of the many hazardous materials from the past 40 years and their effects on the Columbia River and the environment. The State is working with the Center for Disease Control to study the health impacts of radionuclide releases and has given a subgrant to Oregon to provide for their participation in the repository program. Washington is also planning to have an on-site representative at Hanford during site characterization.

Yakima Indian Nation (Dean Tousley) - The tribal staff dealing with the HLW program has grown from three to six persons, as well as a technical coordinator, three consulting firms, and two law firms. The program focuses primarily on technical reviews and issues. They are very supportive of DOE's "electronic mail" system and find it very helpful in obtaining information about the program on a timely basis. They would like to see electronic mail used throughout the program.

Confederated Tribes of the Umatilla Reservation (Dan Hester) - The Umatilla Tribe has just installed a computer system and have issued their first newsletter. In the near future, they intend to hire a librarian, a technical Director, and an on-site representative. The Tribal Nuclear Waste Advisory Committee is determining whether to go back into consultation and cooperation (C&C) agreement negotiations with DOE.

Nez Perce Tribe (Ron Half-Moon) - The Nez Perce stated that they still do not receive meeting notifications and information on a timely basis. They have both possessory and usage rights much broader than just those for the ceded lands. If Hanford is nominated, the Nez Perce intend to develop their own technical resources rather than relying on the Council of Energy Resource Tribes (CERT). They have a very active HLW information program, including a newsletter and television films. They are preparing to begin a C&C process with DOE and have identified 34 issues relating to the process. They will start with a scoping session with DOE. They also plan to establish an on-site coordinator. The states and tribes affected by activities at Hanford are working together. The Nez Perce have just installed IBM compatible computer equipment.

Texas (Steve Frishman) - Texas currently has a staff of four for the HLW program. They are trying to use in-house technical support rather than outside contractors for the State program. They also have a unique situation in which the Texas Geological Survey works under contract to the DOE Salt Repository Project Office in Columbus, Ohio. Mr. Frishman stressed the need for the State to have access to information at the same time as NRC and DOE. He is supportive of the negotiated rulemaking concepts but expressed some reservation concerning representation of parties. Texas plans to sue DOE on the site selection.

Utah (Jack Wittman) - The Utah Nuclear Waste Office works directly for the Governor. Administrative matters are handled by the Governor's staff. Utah has a staff of nine for the waste program with program emphasis on environmental matters. They have just negotiated a "large" technical assistance contract to help the State review the Final Environmental Assessment (EA). The State has also developed a full-text storage data base system. Their office is gearing up for site characterization. The State legislature has appropriated money to the Office for litigation use since DOE grant funds cannot be used.

Mississippi (Don Christy) - The State program has four full-time support staff. The staff also has a nuclear waste advisory committee with members from State and local government as well as citizens. The major State contention with the DOE program is that the Mississippi site is only about two miles from a community of 1200 people, with one home only about 400 yards from the proposed repository site.

Louisiana (Rennie DeVille) - Louisiana has been involved in the HLW repository program since 1977 and works primarily with DOE/SRPO in Columbus, Ohio. Louisiana State University has served as one of the prime contractors for the salt program. The State program could be characterized as "passive" resistance since most people think the State has a veto in its back pocket.

SECOND REPOSITORY PROGRAM STATES/TRIBES

Stockbridge-Munsee Tribe (Kim Vele) - DOE's proposed site is located on the Wolf River Batholith located on the Reservation. After much discussion, the Tribe received a \$30K grant from DOE in December 1985 as well as a "truckload of boxes and materials" to provide background on the HLW program and the Area Recommendation Report (ARR).

Penobscot Nation (Priscilla Attean) - After more than a year of discussions with DOE, the Tribe received a \$30K grant in January 1986. The Tribe believes the HLW repository program is very difficult to understand and expressed that "they have much to learn". The Tribe has requested additional money from DOE for participation in a meaningful way.

Minnesota (Bill Clausen) - Mr. Clausen expressed major concern about the lack of time given by DOE to review the ARR.

White Earth Tribe (Dwight Wilcox) - The Tribe was requested to submit a grant proposal to DOE two days before the due date. The Tribe attempted to obtain assistance from the Bureau of Indian Affairs (BIA) since they have no resources for the HLW program. Since the site is only a candidate site, BIA indicated they would not review petitions for affected status. The Tribe feels they cannot participate meaningfully as long as current DOE policies regarding Indian tribes are in effect.

Wisconsin (David Woodbury) - The current State relationship with DOE is "very shaky;" the State will insist on a C&C agreement being in place before allowing DOE to do any testing at the site. Also, the State has had a petition concerning a transportation rulemaking with the NRC for over two years and wondered when they could expect a reply.

Maine (Judy Kany) - The State fully supports the positions of the Indian tribes in the states. DOE has not provided adequate time or resources for the State to do a complete review of the ARR. Also, they are concerned that the NRC repository licensing process does not adequately protect public health and safety.

NRC MEETING WITH SECOND REPOSITORY STATES/TRIBES

Just before the conclusion of the meeting on the second day, NRC staff met separately with representatives of the second repository states and Indian tribes. Since this was the first time NRC had an opportunity to meet with state/tribal contacts in the second repository program, we provided a general overview of NRC's role in implementing the NWPA and informed them of the opportunities for participation in the program. We also discussed the informational-type services NRC provides, such as NRC's weekly notice of upcoming meetings, the toll-free telephone line, and a designated point of contact within the NRC to answer questions and provide information. Most of the participants were unaware of these services and wanted to be added to our mailing list. Also, since there was some confusion about NRC's role in the HLW program, we agreed to send them copies of 10 CFR Part 60 as well as a Commission organizational chart.

We emphasized that the Commission did not have grant money or funds available for state or tribal participation in NRC activities. We pointed out that we had discussed with DOE Headquarters the use of DOE grant funds by states/tribes to attend this meeting; DOE said this was an acceptable use of their grant funding. However, it was stressed that utilization of DOE grant funds was between the individual state/tribe and DOE. There were some questions about the scope of NRC participation in the second repository program. We said we were currently reviewing our resources and would keep them informed in the future. Currently, NRC only has three state points of contact in the second repository program and no tribal contacts. We proposed sending a letter to the Governors and Tribal Chairmen requesting a contact be designated. The states/tribes were supportive of this approach and urged us to do it as soon as possible.

SUMMARY OF MEETING EVALUATIONS

At the end of the meeting, we requested that attendees fill out a short questionnaire evaluating the meeting. Following are the results:

1. Was this meeting informative and/or useful?

There was unanimous agreement in the evaluations that the meeting was both informative and useful. "Topics were germane and complete." "Good opportunity to meet and talk with NRC staff." "Given the amount of information received to date by the second round tribes, it is naturally informative; but NRC should correspond more with second round representatives."

2. Would it be useful to have other such meetings and, if so, how often?

Once again, all evaluators agreed that it would be useful to have other such meetings. However, recommended frequency ranged from quarterly to "on an as needed basis." Most evaluators recommended that meetings be held on a quarterly basis so they could keep up to date on our activities. "NRC should also be available for special meetings with states/tribes as necessary or as significant changes develop in the program."

3. Was subject matter appropriate? What other subjects would you like to see covered in future meetings?

There was unanimous agreement among evaluators that the subject matter was appropriate. "Nice to know what's going on and possibilities for state/tribal contributions." Recommendations for other subjects to be covered in future meetings include: all applicable NRC regulations, quality assurance, technical issues, criteria for site characterization, sociopolitical issues and NRC position on these, licensing progress, status of program, NRC position on tribal treaty rights, and NRC planning schedule for next 12 months for the second repository program. "Subjects are like targets of opportunity--they have to be put on the agenda as they come up."

4. What improvements would you suggest for future meeting?

Several evaluators indicated they did not get notification or receive information package soon enough. "It would help us considerably to be able to receive the material at least 2-3 weeks prior to the meeting so we could review it and participate meaningfully in the meeting." "More and better microphone system for audience participation." "It would be very helpful to get a glossary at the beginning of the meeting with terms/acronyms that are used throughout the meeting." "More formally set aside opportunity for states/tribes to discuss their programs and raise their concerns - and let them know about this opportunity in advance of the meeting." "State/tribal session

was very informative but could have been more productive with advance notice." "Demonstrations of the Licensing Support System should be more organized and less frequent--two is probably sufficient." "Alternate locale of meeting place since limited financial resources place constraints on travel."

5. What questions/concerns do you have as a result of the individual presentations?

Several concerns were raised about the negotiated rulemaking process. "The states/tribes have different agendas, so I don't think you could find a single representative that could coordinate both state and tribal concerns." "Negotiated rulemaking will 'boil down' issues too much before they get to the Commission." Several asked if the negotiated rulemaking is 'just for first round?'. There were also questions about access and input of data into the Licensing Support System (LSS) by state/tribes. "Legally, who will use data and who will determine what is proprietary." "Concerned that the LSS rules will apply only to outside parties, not to NRC or DOE." "At what point in their development must data/documents be entered into the LSS?" Other general questions and concerns: "Timetable for licensing appears extremely unrealistic." "NRC is not adequately following the second repository program."

6. General comments about any aspect of the meeting.

Generally, evaluators felt it was a good meeting with good quality presentations. "Slides need to be larger and presentations could use a little more polish." "Opportunity for state/tribal presentations on their activities was very useful and enlightening." "I was pleased that the NRC included the second round people in this meeting--they can learn from the first round." "The NRC attempt to bring in states/tribes early-on is most appreciated." "NRC appears to have a positive attitude about feedback and responding to the needs and questions of states/tribes." "NRC has the correct attitude toward the program and competent staff to carry it out."

ORIGINAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

IN THE MATTER OF:

**STREAMLINING THE LICENSING PROCESS
AND DEMONSTRATING THE LICENSING
SUPPORT SYSTEM**

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Docket No. 4POR 4LPDR 4Distribution:
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Bender Thomas
Katman Cameron

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Rev. C. Russell, this
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NATIONWIDE COVERAGE

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
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STREAMLINING THE LICENSING PROCESS
and
DEMONSTRATING THE LICENSING
SUPPORT SYSTEM
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Held at
Zeus Room
Alexis Park Hotel
375 East Harmon Avenue
Las Vegas, Nevada
20
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Tuesday
April 29, 1986
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1

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3 Joseph Bunting, Chief, Policy and Program Support Branch, WM
4 Phil Altomare, Section Leader, Program Planning, WM
5 Avi Bender, Project Manager, Pilot Project, WM
6 F. Cameron, Senior Regulations Attorney, ELD
7 Cathy Russell, Project Manager, State/Tribal NWPA Activities
8 Ken Kalman, Project Manager, Geosciences
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P R O C E E D I N G S

8:50 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the program also.

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

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

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

10 MR. STEVENS: David Stevens, consultant.

11 MR. BRADHURST: Steve Bradhurst, consultant.

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

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

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

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

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

19 MS. SPRUILL: Lisa Spruill, Mississippi.

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

21 MS. ZIMMERMAN: Susan Zimmerman, Texas.

22 MR. FRISHMAN: Steve Frishman, Texas.

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

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

MR. ERNSTUN: Kutret Ernstan, Mississippi.

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

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

5 MR. WITTMAN: Jack Wittman of Utah.

6 MR. JOHNSON: Carl Johnson, Nevada.

7 MR. DAVENPORT: Jim Davenport, Washington.

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

9 MS. ATTEAN: Priscilla Attean, Penobscot Nation.

10 MR. STEELE: Al Steele, Passamaquoddy Tribe.

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

13 MR. RUGER: Alan Ruger, GLIFWC.

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

15 MR. HESTER: Dan Hester, Umatilla Tribe.

16 MS. BRONSON: Ginny Bronson, Umatilla Tribe.

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

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

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

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

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

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

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

1 MR. FLUORNOY: Bill Fluornoy, North Carolina.
2 MR. BADBOY: Ken Badboy, Bois Forte Reservation.
3 MR. ROBERTSON: John Robertson, Lower Sioux.
4 MR. WHITEMAN: William Whiteman, Bois Forte RBC.
5 MS. LEHMAN: Linda Lehman, State of Minnesota.
6 MR. GOODTHUNDER: Joe Goodthunder, Lower Sioux
7 Committee.
8

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

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

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

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

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

1 Brian is a project manager. He just started with
2 NRC and his boss will also be here, Mr. John Linehan, and
3 he's the acting chief of the Repository Projects Branch.

4 The first thing we're going to discuss with you
5 is the five-year plan for the NRC High Level Waste Program.
6 We have briefed our management on it, they feel that they
7 like the concept, like what's in there, so we would like if
8 perhaps you all could look at it and give us any ideas or
9 let us know where we might have missed something.

10 After that, Joe will talk about our efforts to
11 avoid conflict of interest in long term technical support.
12 When we started the program under the Nuclear Waste Policy
13 Act we began to realize that there was a fairly limited
14 pool of technical resources available and that many of the
15 same groups were also competing for these same resources. --
16 the Department of Energy, the NRC, the states, the tribes,
17 the public interest groups -- and our attorneys essentially
18 told us that we could end up having a lot of trouble once
19 we got into a licensing proceeding by having any perceived
20 or real conflict of interest with contractors who had done
21 work for us but who had also done work for the Department
22 of Energy, one of the states, or something along those
23 lines.

24 So we have come up with a proposal to get a
25 federally-funded research and development center to try and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 possible chance of those issues arising at that time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Would you identify yourself?

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

15 MR. BUNTING: Okay, Jack.

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

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

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

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

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

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

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

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

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

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

5 Any other questions? Linda?

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

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

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

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

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

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

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

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

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

6 Any other questions on that?

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

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

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

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

20 With all that beep-beep-beep going on over there
21 I was beginning to worry. I hope it will be all right.

22 Brian is on our planning staff. We pressed him
23 into service here.

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

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

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

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

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

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

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

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

8 Next slide, if you would. View graph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Accordingly, DOE has agreed to go ahead and

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

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

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

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

25 Next slide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 MR. ERNSTUN: Analyzing data.

18 MR. ALTOMARE: Analyzing data.

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

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

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

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

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

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

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

15 Are there any other questions? Yes. Jack?

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

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

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

10 Yes, sir?

11 Would you mind using the mike?

12 MR. HUTCHINS: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 send a representative to that Coordinating Committee meeting.

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

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

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

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

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

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

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

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

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

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

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

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

1 show you --

2 Were they on the list of TWIX? Yes.

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

8 Now, you can answer the second question.

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

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

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

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

1 would just have a surrogate listing.

2 And in terms of our authority, I think that we
3 have authority for anybody who wants to participate in our
4 licensing proceeding to set what the rules of discovery are
5 going to be, including this information management system.
6 But because there are so many different types of systems
7 out there as the gentleman from CERT alluded to, and be-
8 cause there are so many important points to consider.

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

14 MR. ALTOMARE: Is there one more question?

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

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

19 MR. FRISHMAN: Steve Frishman, Texas.

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

25 And hooked onto that is with or without the

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

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

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

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

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

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

25 The new procedural rule that the Commission will

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

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

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

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

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

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

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

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

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

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

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

25 They also suggested, or they have asked, I

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

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

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

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

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

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

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

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

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

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

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

1 an actual demonstration of what these systems should do.

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

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

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

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

25 But until such time we will continue with our

1 efforts in our move toward the interim information system.

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

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

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

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

1 types of procedures for indexing documents.

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

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

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

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

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

25 Now, there are advantages to using either

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

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

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

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

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

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

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

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

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

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

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

1 sign off.

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

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

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

16 Next.

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

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

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

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

25 This is the document capture and retrieval process.

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

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

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

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

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

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

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

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

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

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

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

1 the individuals who are now operating on manual microfiche
2 system, so they have a pretty good understanding when a
3 document comes in as to how best to surrogate that.

4 And eventually that information is sent into the
5 full text system. The final product basically is a diskette
6 with the information, and we do a sent command and send it
7 over to the system in Tampa, Florida.

8 There are a number of problems in the --

9 Yes?

10 MR. DAVENPORT: Jim Davenport. Could you go back
11 to the previous slide?

12 The electronic file temporary there, the center
13 box --

14 MR. BENDER: Yes.

15 MR. DAVENPORT: Given the fact that you have the
16 capability that you've just described, would it not be
17 possible for all records or all physical pieces of paper or
18 other information produced by any party to be put into this
19 system notwithstanding whether it's a relevant document or
20 a pertinent document or an interesting document, but in fact
21 the entire field of all documents could be temporarily
22 placed in the system with a later determination to kick it
23 out if it was determined by --

24 MR. BENDER: Exactly. It's very difficult at
25 this point to draw bounds on what is a licensed relevant

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. BUNTING: Yes, it is.

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

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

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

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

14 MR. DAVENPORT: I understand.

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

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

21 MR. ALTOMARE: Right.

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

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

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

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

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

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

1 previous system, is the access to full text.

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

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

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

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

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

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

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

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

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

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

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

1 information into machine readable format.

2 Next.

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

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

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

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

25 (Whereupon, a short recess was taken.)

1d/1

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

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

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

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

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

1d/2

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

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

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

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

1d/3

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

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

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

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

1d/4

1 level waste licensing proceeding.

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

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

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

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

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

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

1d/5

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

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

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

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

1d/6

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

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

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

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

1d/7

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

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

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

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

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

1d/8

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

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

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

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

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

1d/9

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

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

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

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

✓ 1d/10 1 towards agreement.

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

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

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

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

1d/11

1 affected by transportation of the nuclear waste.

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

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

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

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

1d/12

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

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

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

1d/13 1 the group, unless it was inconsistent with our statutory
2 authority or otherwise unjustified.

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

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

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

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

1d/14

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

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

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

1d/15

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

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

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

ld/16

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

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

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

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

1d/17

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

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

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

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

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

1d/18

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

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

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

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

1d/19

1 process.

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

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

19 In this respect the coordinating committee is
20 developing information on those areas that will be used
21 along with any other information that the negotiating commit-
22 tee needs to reach a consensus on this particular issue.
23 So that, the coordinating committee is not for closing those
24 protocol issues. That is going to be left to the negotiating
25 committee.

1d/20

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

3 MR. DAVENPORT: (Question not audible.)

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

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

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

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

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

1d/21

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

3 MR. CAMERON: All right.

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

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

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

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

1d/22

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

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

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

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

1d/23

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

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

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

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

1d/24

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

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

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

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

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

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

25 MR. CAMERON: Yes. This particular rulemaking is

1d/25

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

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

16 MR. CAMERON: Okay.

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

1d/26

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

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

13 You are also concerned about NRC, right?

14 MR. FRISHMAN: (Nods in the affirmative.)

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

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

1d/27

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

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

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

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

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

1d/28

1 in the most rational way possible.

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

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

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

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

1d/29

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

7 MR. TOUSLEY: (Question not audible.)

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

16 MR. STEVENS: David Stevens again.

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

1d/30

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

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

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

1d/31

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

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

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

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

1d/32

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

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

10 Any other questions?

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

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

20 MR. CAMERON: Yes.

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

1d/33

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

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

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

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

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

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

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

1d/34

1 record of rulemaking or does it just go away?

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

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

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

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

1d/35

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

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

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

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

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

1d/36

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

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

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

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

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

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

1d/37

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

5 But thanks for the comment.

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

9 MR. CAMERON: Any other comments?

10 (No response.)

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

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

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

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

1d/38

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

2 1:38 p.m.

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

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

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

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

1d/39

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

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

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

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

✓ 1d/40

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

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

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

1d/41

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

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

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

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

✓ 1d/42

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

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

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

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

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

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

1d/43

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

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

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

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

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

25 And basically, the way the system was structured

1d/44

1 was that issues obviously could be raised by anyone in this
2 process. Those would be brought to the attention of the NRC,
3 and then they would somehow be filtered and go through an
4 internal process, get into the system. Eventually, reports
5 would be generated, leading to resolution at some point.
6 This information would go to the public. You would then pro-
7 vide us with your comments, and then the feedback back into
8 the system.

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

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

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

1 ld/45 1 them into the system, and so forth?

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

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

13 Next, please. (Pause.)

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

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

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1 meet with respect to public health and safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Are there any questions?

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

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

25 MR. BENDER: The way these issues are being

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

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

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

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

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

11 Yes?

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

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

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1 having been considered and go into a disposition list.

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

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

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

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

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

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

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

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

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1 what happened at those meetings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 With that, here is John.

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

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

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

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

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

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

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

25 The first three here deal with licensing

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

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

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

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

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

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

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

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

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

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

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

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

25 The ultimate goal here is to reduce the number

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 One of our main responsibilities during this pre

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

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

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

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

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

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

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

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

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

1 the sites in the various technical areas.

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

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

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

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

25 On the next slide, once we have gone through

1 this process of scoping out the issues and determined in
2 meetings what needs to be done to work on resolution of
3 these issues, we see using the mechanism of generic
4 technical positions, site-specific technical positions to
5 establish and document concensus on agreements that have
6 been reached at meetings with the Department of Energy.
7 And this isn't just agreements, this is also
8 disagreements.

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

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

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

4 In the past, very often if we issued a technical
5 position in draft form it would state what our basic
6 position was. And that was pretty much it. What we are
7 considering in technical positions that we are going to
8 be issuing in the future is not only to lay out what our
9 basic technical position is, but also to request comment
10 on some of the most contentious areas of that position.
11 In some cases we may find that there is significant
12 disagreement on what the position should be. What we are
13 going to be doing is actively soliciting comments from
14 folks on these various issues, rather than just issue a
15 technical position that is fairly cut and dried, is to
16 lay out what some of the problem areas are, to try to get
17 feedback and to try to get comments.

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

1 coordination with DOE, with the states and tribes.
2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 MR. DAVENPORT: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 on a particular process.

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

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

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

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

1 one person available and assigned to this. And I know
2 the tribes and other states are in the same situation.
3 So until there is something firmer on site designations
4 and staffing, that is bound to happen. So that is just a
5 comment.

6 The question I have is how are some of these
7 ongoing open questions going to be resolved? The one
8 that comes to mind and I will bring up is the quality
9 assurance issues that were brought up during site
10 characterization reviews, your site characterization
11 analysis. It was a uniform comment by both NRC and
12 states about USDOE quality assurance, both the
13 organization within the Department of Energy, level
14 within the Department of Energy, the matrix management.
15 But even now DOE admits that they don't have enough
16 people to do an adequate quality assurance at each of the
17 sites -- more knowledge about BWIP and others. But I
18 think at each of the sites that they are very short on
19 quality assurance. This is an issue that has been open
20 since site characterization report days, and I don't see
21 yet a mechanism for resolving it.

22 MR. LINEHAN: I think there is a mechanism that
23 is in action right now. If you look at the QA review
24 plan that we put out, where we lay out a lot of the basic
25 things that DOE was going to need in the QA area. If you

34
1 look at the comments we provided to the Department of
2 Energy on the headquarters QA plan where we address the
3 issues you have addressed about where QA reports in the
4 organization, the number of people, staffing, and things
5 of this nature, that there is an ongoing interaction
6 where these have been identified as issues. I agree they
7 were identified several years back. But I don't think
8 there was any progress for a number of years.

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

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

25 MR. PROVOST: What about the philosophical

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

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

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

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

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

1 proposing to do, before they actually begin to undertake
2 site characterization. Now what DOE is going to do
3 between now and then to get it in place, I can't tell you.
4

5 MR. PROVOST: On federal sites especially, site
6 characterization is under way. This is an ongoing thing
7 that just clouds more data and more data as it goes on.
8

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

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

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

As we lay out the approach for what is going to

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

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

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

1 to show compliance with the standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 approach to try to work it that way.

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

8 MR. BUNTING: We are.

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

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

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

1 DOE's incompetence at this point.

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

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

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

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

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

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

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

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

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

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

25 One other thing we are concerned about, we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MR. LINEHAN: One final point. I think this is
6 something that we should discuss further in the meeting
7 we are going to be having with DOE on what is going to be
8 in the SCP. I think we need to get into how all these
9 interactions prior to the SCP also are going to tie in.

10 MR. CAMERON: In relation to the issue that Jim
11 Davenport brought up earlier, I am not sure how relevant
12 this is to that, but in the final procedural amendments
13 to Part 60 that the Commission will be issuing in the
14 future, those rules require the NRC to state any specific
15 objections that we have to DOE's site characterization
16 plan.

17 MR. LINEHAN: I think we have pretty well gone
18 over this slide.

19 The final slide here deals with the third goal
20 that I laid out on the original slide this morning. And
21 it has to do with development of our independent
22 technical review capability. This is a critical part of
23 us developing work plans, laying out what needs to be
24 done to address any issue to provide timely guidance to
25 the department and to do what the NRC needs to do at

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1 certain phases of the program.

2 What we are going to be doing for the various
3 issues that we identify is establishing review criteria
4 and the review approach that we are going to be using.
5 We are going to be doing this for each compliance
6 demonstration issue, and as necessary for other generic
7 issues and other site-specific issues. Hopefully in most
8 cases we can come up with a basic generic approach, and
9 then modify it for the various sites that we have to
10 consider.

11 We are going to have to do this for various
12 stages of the program. There is going to be various
13 levels of site data available. The uncertainty is going
14 to change significantly as we get into the program, as we
15 go from the SCP to the SCP updates, and finally to the
16 license application. And what we are going to do is lay
17 out a strategy that we will follow when we review each
18 one of these documents as it comes in.

19 For those of you that are familiar with the
20 modeling strategy document that we issued, I believe it
21 was in mid or late '84, it is a document that basically
22 lays out, it spells out, the level of detail, the type of
23 review we are going to do in each technical area when we
24 review the license application. As we go through this
25 process or identifying issues, looking at what is

1 important to various issues at various phases of the
2 program, we are going to be developing additional
3 modeling strategy documents that will address the review
4 we do at the time of the SCP and the biannual updates on
5 the SCP that we receive from the Department of Energy.
6 These documents will be discussed in meetings as we
7 develop them. They will be available for review and for
8 comment.

9 What we have seen as looking at the modeling
10 strategy that we developed for the license application,
11 the document we put out in 1984, is we feel, again for
12 those of you that are familiar with it, we need much
13 greater level of detail spelling out the types of models
14 we will use, the types of codes we will use, areas where
15 we will do a totally independent review, do our own
16 independent modeling effort, areas where we will rely on
17 verification validation of models that are developed and
18 used by the Department of Energy. This is going to vary
19 for the different technical areas. It is going to be a
20 call we are going to make, based on the complexity of the
21 issues, areas where we don't necessarily agree with the
22 particular code and model that is being used by the
23 Department. And we are going to have to pick and choose
24 on these.

25 We have always said that we are not going to be

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1 able to do a one hundred percent review of every
2 calculation the Department does. What we are going to do
3 is we identify issues, try to focus on the most important
4 things that need to be reviewed so we can make an
5 independent determination as to whether the DOE is indeed
6 meeting the regulations when they file the license
7 application with us.

8 One of the additional things we are going to be
9 doing as we develop these review approaches and these new
10 modeling strategies is looking at the contractor work
11 that we have, the technical assistance work, the research
12 work, to try to recalibrate, to decide if we are getting
13 the information that we need through these contracts to
14 put us in a position to do these independent reviews, or
15 if we have to modify some of these contracts.

16 Again, on all of these things, just about
17 everything that we will develop and everything that
18 exists today, the different statement of works for the
19 contracts, documents such as the modeling strategy
20 document, they are all available. And what we are
21 looking for is any input where you could give us some
22 constructive feedback as to what we need to do to help
23 get ourselves in a position where we are ready to review
24 the application when it comes in in 1991.

25 Everything I have talked about today is in the

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1 preliminary stages. We are just starting to come up with
2 a methodology for implementing the five-year plan. And
3 we are looking for constructive feedback. It is only
4 going to work as an open process if we get effective
5 interaction with all of the parties involved. And any
6 comments you could give us at the meeting or as a
7 followup to the meeting would be appreciated.

8 Are there any other questions?

9 MS. RUSSELL: We have sort of two distinctly
10 different groups here at the meeting today. We have the
11 people who are involved in the first-round program. And
12 they are in a very different phase of activities. And
13 then we have the state and the tribes here from the
14 second-round program. Rather than making those from the
15 first round kind of listen to what they have heard on
16 numerous occasions, we would like to sort of make a
17 suggestion in terms of a change in the agenda.

18 We would like to, tomorrow morning, if it is
19 satisfactory with everyone, ask a rep from each of the
20 states and tribes that are here to come up to the mike
21 and give us just a real brief overview of where your
22 program is and what you are doing, and what problems you
23 might have.

24 Very often we find at these kinds of meetings
25 that we are always talking about what we are doing, but

1 we don't get a whole lot of feedback from the states and
2 tribes about what they are doing and where they are in
3 the process. So that would be very helpful.

4 And then after that, if possible, we would like
5 to meet with the representatives from the second-round
6 states and Indian tribes that are here and at least kind
7 of give you a general overview of our state and tribal
8 participation program, if that is satisfactory with
9 everyone.

10 In the first critique I got back of the meeting,
11 one of the comments was that additional time needed to be
12 provided for outdoor recreational activities. So in
13 order to try to accommodate that, I think we probably can
14 close up now.

15 I want to once again thank you for coming, and I
16 want to thank you for generously donating your dollars
17 for the coffee. And we will see you tomorrow morning
18 about 9:00.

19 (Whereupon, at 4:06 p.m., the meeting was
20 adjourned.)

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1 CERTIFICATE OF PROCEEDINGS

2
3 This is to certify that the attached proceedings
4 before the NRC COMMISSION

5 In the Matter of: STREAMLINING THE LICENSING
6 PROCESS and DEMONSTRATING
7 THE LICENSING SUPPORT SYSTEM

8 Date of Proceeding: April 29, 1986

9 Place of Proceeding: Las Vegas, Nevada
10 were held as herein appears, and that this is the original
11 transcript for the file of the Commission.

12 Horace W. Briggs
13 Official Reporter - Typed

14 H. W. Briggs
15 Official Reporter - Signature

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2 UNITED STATES OF AMERICA
3 NUCLEAR REGULATORY COMMISSION
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7 STREAMLINING THE LICENSING PROCESS
8 and
9 DEMONSTRATING THE LICENSING
10 SUPPORT SYSTEM
11
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17 Held at
18 Zeus Room
19 Alexis Park Hotel
20 375 East Harmon Avenue
21 Las Vegas, Nevada
22
23
24
25

26 Tuesday
27 April 29, 1986
28
29
30

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3 Phil Altomare, Section Leader, Program Planning, WM
4 Avi Bender, Project Manager, Pilot Project, WM
4 F. Cameron, Senior Regulations Attorney, ELD
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1 P R O C E E D I N G S

2 8:50 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the program also.

2 It may take a few minutes but I would appreciate
3 it if perhaps we could go around the room and people could
4 say who they are and who they're with just so we all have a
5 general idea of who is here. Would that be satisfactory?

6 MR. HEAD: I'm Charles Head. I'm with DOE
7 Headquarters Licensing.

8 MR. LARKINS: John Larkins, Office of the
9 Commission.

10 MR. STEVENS: David Stevens, consultant.

11 MR. BRADHURST: Steve Bradhurst, consultant.

12 MR. ZIEGLER: Jim Ziegler, White Earth Reservation.

13 MR. WILCOX: Dwight Wilcox, White Earth Reserva-
14 tion.

15 MR. CLAUSEN: Bill Clausen, State of Minnesota.

16 MS. LEHMAN: Linda Lehman, State of Minnesota.

17 MR. NEWMAN: Harry Newman, State of North Caro-
18 lina.

19 MS. SPRUILL: Lisa Spruill, Mississippi.

20 MR. CHRISTY: Don Christy, State of Mississippi.

21 MS. ZIMMERMAN: Susan Zimmerman, Texas.

22 MR. FRISHMAN: Steve Frishman, Texas.

23 MR. TINSLEY: Tom Tinsley, Science Applications
24 International.

25 MS. HATCH: Karen Hatch, DOE, Nevada operations.

MR. ERNSTUN: Kutret Ernstun, Mississippi.

1 MR. DAWSON: David Dawson, Science Applications
2 International.

3 MR. TOUSLEY: Dean Tousley of Harmon & Weiss for
4 Yakima Nation.

5 MR. WITTMAN: Jack Wittman of Utah.

6 MR. JOHNSON: Carl Johnson, Nevada.

7 MR. DAVENPORT: Jim Davenport, Washington.

8 MS. KANY: Judy Kany, State of Maine.

9 MS. ATTEAN: Priscilla Attean, Penobscot Nation.

10 MR. STEELE: Al Steele, Passamaquoddy Tribe.

11 MR. SCHLENDER: James Schlender, Lac Courte
12 Orielles Tribe.

13 MR. RUGER: Alan Ruger, GLIFWC.

14 MR. WOODBURY: David Woodbury, State of Wisconsin.

15 MR. HESTER: Dan Hester, Umatilla Tribe.

16 MS. BRONSON: Ginny Bronson, Umatilla Tribe.

17 MR. HUTCHINS: John Hutchins, Council of Energy
18 Resources Tribes.

19 MR. HALFMON: Ron Halfmoon, Nez Perce Tribe.

20 MR. PROVOST: Don Provost, State of Washington.

21 MS. RUNYON: Cheryl Runyon, National Conference
22 of State Legislatures.

23 MR. VILLEBRUN: David Villebrun, Bois Forte Re-
24 servation, Minnesota.

25 MS. VELE: Kimberly Vele, Stockbridge-Munsee.

 MR. MILLER: Joel Miller, Stockbridge-Munsee Tribe.

1 MR. FLUORNOY: Bill Fluornoy, North Carolina.
2 MR. BADBOY: Ken Badboy, Bois Forte Reservation.
3 MR. ROBERTSON: John Robertson, Lower Sioux.
4 MR. WHITEMAN: William Whiteman, Bois Forte RBC.
5 MS. LEHMAN: Linda Lehman, State of Minnesota.
6 MR. GOODTHUNDER: Joe Goodthunder, Lower Sioux
7 Committee.

8 MR. SHEPHERD: Joe Shepherd, Leech Lake Reserva-
9 tion.

10 MR. BICHLER: Howard Bichler, St. Croix Chippewa.

11 MR. ARONSON: H.H. Aronson, Yakima Indians.

12 MR. ACKLEY: William Ackley, Wisconsin.

13 MR. ROSS: Dallas Ross, Upper Sioux Committee.

14 MR. BLUE: Dean Blue, Minnesota.

15 MS. RUSSELL: Okay. We sent out a package of
16 information for you before the meeting, and for those who
17 either forgot it or did not get it on the back table there
18 are copies of all the documents we're going to be talking
19 with you about today.

20 And now I'd just like to take a couple of minutes
21 to go through the agenda with you so you have an idea of
22 what's going to be happening.

23 This is Brian Thomas. He's with NRC. I forgot
24 because he's quietly sitting there getting ready to do the
25 view graphs.

1 Brian is a project manager. He just started with
2 NRC and his boss will also be here, Mr. John Linehan, and
3 he's the acting chief of the Repository Projects Branch.

4 The first thing we're going to discuss with you
5 is the five-year plan for the NRC High Level Waste Program.
6 We have briefed our management on it, they feel that they
7 like the concept, like what's in there, so we would like if
8 perhaps you all could look at it and give us any ideas or
9 let us know where we might have missed something.

10 After that, Joe will talk about our efforts to
11 avoid conflict of interest in long term technical support.
12 When we started the program under the Nuclear Waste Policy
13 Act we began to realize that there was a fairly limited
14 pool of technical resources available and that many of the
15 same groups were also competing for these same resources --
16 the Department of Energy, the NRC, the states, the tribes,
17 the public interest groups -- and our attorneys essentially
18 told us that we could end up having a lot of trouble once
19 we got into a licensing proceeding by having any perceived
20 or real conflict of interest with contractors who had done
21 work for us but who had also done work for the Department
22 of Energy, one of the states, or something along those
23 lines.

24 So we have come up with a proposal to get a
25 federally-funded research and development center to try and

1 resolve that, and Joe's going to talk to you about that in
2 a little more detail.

3 After that, Avi and Phil are going to kind of
4 give you an intro to what they're doing on the licensing
5 support system. And if you look at the agenda, you'll see
6 that we have four different breaks where they're called
7 demonstration breaks. Those will take place over there
8 where the computer is and what we'd like to do is just
9 perhaps have a quarter of you go over each time and they
10 will go through the system and how it works with you.

11 Also, the system will be available and someone
12 will be here all day tomorrow to answer questions or to
13 help you work the system. So if you have any questions,
14 want to do something, just let us know.

15 After that, we will be discussing negotiated
16 rulemaking and that will be Ken and Chip Cameron. And then
17 we will have the second demonstration of the system and
18 take time out for lunch.

19 We want to get started back up again at 1:30. At
20 that time we will be discussing allegations. And then once
21 again Avi and Phil will talk to you about the pilot project
22 for the licensing support system.

23 Then we will have the third demonstration break.
24 Then we will discuss open item resolution. After that,
25 we will want to talk a little bit about what we're doing

1 with the states and tribes at the NRC. And then discuss
2 early closure of licensing open items, how that could be
3 achieved. And then an overview of our current program with
4 state tribal participation. And then have a final demon-
5 stration for today.

6 What we would also like is if for tomorrow rep-
7 resentatives from the states and from the tribes could
8 perhaps each give us a little bit of a presentation about
9 what you're doing in your program and where you're going.
10 Nothing very elaborate, but we would like to at least have
11 a general idea about what's happening with the various states
12 and tribes.

13 Also, we will be available, as I said, all day
14 tomorrow to work on the system, to meet with you -- it's
15 sort of a flexible day. So if you have anything to discuss,
16 please feel free to do so.

17 So I guess we'll get started and Joe will be dis-
18 cussing the five-year plan with you.

19 MR. BUNTING: In the material we sent to you is
20 a copy of the five-year plan. I'm going to focus on the
21 differences in the plan as opposed to what was currently
22 being performed by NRC prior to the issuance of the plan.

23 We kind of laid out the situation and came up
24 with four goals that we would like to try to achieve in
25 the next five years, and the first two goals I think you're

1 pretty much familiar with. Those are the typical kinds of
2 things we have been doing in the past, which is trying to
3 get guidance to DOE in the form of reg guides, regulations,
4 and to go through the issue of identification, which we
5 normally do through the review of documents submitted to
6 us through DOE, through meetings, consultation and those
7 kind of things.

8 And that's principally been both generic and
9 site specific issue identification.

10 The other goal that we have typically been working
11 on is to develop our own in-house independent licensing
12 capability. And here we're talking about the development
13 of standard review plans, methods, models, and codes.
14 Those are things we've had underway for quite some time.

15 The two somewhat new efforts that we have in the
16 plan have to do with formal issue resolution and streamlin-
17 ing the licensing process.

18 Now, in formal issue resolution we're all harking
19 back now to the requirement in the NWPA that the Commission
20 reach a decision within three years after the application
21 is tendered to the Commission. And the three-year time
22 frame includes both the time for staff review and for the
23 licensing board review and for the Commission decision.

24 So that doesn't give the staff an awful lot of
25 time to do its job. As a matter of fact, when the Act was

1 under discussion in Congress we were asked to comment on
2 the time and we said that it would take at least 42 months,
3 and that was a very optimistic estimate on the part of the
4 staff.

5 As you know, the Act gives us 36 months. We can
6 take another 12 months for good cause, but ideally wants us
7 to do our job now in 27 months.

8 So we're all trying our best to do two things
9 which are coordinated, and that is the formal issue resolu-
10 tion and streamline the licensing process.

11 Now, the formal issue resolution will contain a
12 lot of the things that you've been familiar with. This
13 will be the generic technical positions, the site technical
14 positions, and the rulemaking. But we're going to go a
15 little bit further in that effort and we're trying to de-
16 velop the technical consensus on both generic and sites
17 specific issue to the extent we can prior to receipt of the
18 application..

19 So this means the tech staff is going to have to
20 go a little bit further than what they were before, and
21 this is where it's going to involve you the states and you
22 the tribes. If you have particular issues regarding these
23 technical positions then we need to know what they are and
24 we need to work out a process by which we can find out that
25 and have the tech staff address those technical issues and

1 technical concerns and hopefully reach a position where
2 they're satisfied to defend their position in some formal
3 mechanism prior to receipt of the application.

4 Now, the kinds of things we had in mind here would
5 be, for instance, some of the performance criteria which
6 are intensive. Most of the findings are findings based on
7 performance. That is, how long the canister will last,
8 how long the ground water travel time is, do you have re-
9 trievability. We will never be able to make a three-year
10 licensing review if we're going to have to argue about and
11 litigate the methodology during that three-year period.

12 So the kinds of things we have in mind is to try
13 the best we can to address the question of how, prior to the
14 receipt of the application. And that's going to involve
15 a very active rule on your part with us and with the Depart-
16 ment to come to a resolution on how.

17 Now, as part of streamlining the licensing pro-
18 cess once the technical staff, your technical staff, have
19 come to a position that we either agree, we agree to dis-
20 agree, we know what the reasons are, then in the streamlin-
21 ing process one of the things we'll be doing is looking for
22 new ways in which to recheck final decisions on the method
23 prior to the application.

24 That could involve either rulemaking on method-
25 ology or it could involve such things as convening a hearing

1 board with a very limited scope just to address those parti-
2 cular issues.

3 But any formal mechanism that we have not -- I
4 repeat we have not -- come to any conclusions on what those
5 mechanisms would be. So if any of you out there have ideas
6 as to how we could do that, we solicit your input.

7 Moving on now to other activities in the stream-
8 lining process. That gets us to where we are today and for
9 the purpose of this meeting. Everything that you're going
10 to see and hear about from here on out are activities that
11 we have put in place to further this goal of streamlining
12 the licensing process, and the efforts that you're going to
13 be talking about or processes that I just mentioned were
14 the appropriate processes once we have a technical consensus
15 or technical position we've resolved it as far as we can
16 go, then how do we get that formally resolved prior to the
17 application.

18 We'd like not to have to do that while the clock
19 is running.

20 We'll be talking about allegations. We'll talk
21 more about that. Conflict of interest. We would like not
22 to have conflict of interest charges coming up during that
23 time because if put in question all the technical programs
24 that we have in place. So we feel it's very, very important
25 that we take every effort that we can now to avoid any

1 possible chance of those issues arising at that time.

2 So that's all I'm going to say now about the
3 five-year plan, and I would like to move on now to the
4 potential conflict of interest and the FFRDC.

5 As Cathy told you we started almost two years ago
6 looking into the problems of conflict of interest. We have
7 had several cases where we have lost contractors, people
8 that we started off with originally, got them up to speed,
9 and then we either lose them either to a state or to DOE.

10 And there have been instances in the past in
11 which the hearing board has called into question the credi-
12 bility of witnesses testifying on behalf of the staff when
13 it's shown that those witnesses have also been supportive
14 of applicants or people who were in the same class as the
15 applicant.

16 And it diminishes the importance of the testimony
17 being given in the hearing. So we have met with the Office
18 of Federal Procurement Policy to try and find ways to get
19 around the normal procurement process which requires us to
20 recompete every contract every five years.

21 For those of you who are wondering, we do have
22 provisions in each contract that says the contractor can
23 work cannot take the contract that would give him a conflict
24 of interest.

25 The problem is that if he elects to go ahead and

1 do that, we only have one recourse and that's the terminate
2 the contract. That leaves us high and dry, we've lost the
3 technical expertise we spent our money on. More importantly,
4 we've lost the time that we've taken to develop that exper-
5 tise. So we start all over again with the very lengthy
6 procurement process which in many cases takes us nine months
7 or more to go through the normal procurement process,
8 identify a new contractor, and the first task is always to
9 get up the speed, the second task is finf out what everybody
10 else is doing, and the third task is do some work for us.

11 So we've done that now over and over and over,
12 and we've had some 30 contracts or more in place at the
13 current time in which each one of these contractors sees
14 one small piece of the program.

15 Now, also for a minute think beyond just the
16 repository, and John Davis, who is our office director, has
17 responsibility for not just the repository program but the
18 MRS, storage and transportation. Those are activities
19 that are not performed in the Division of Waste Management.

20 Many of the folks in my branch try to focus and
21 try to integrate all of those efforts for the Commission.
22 So the activities that we're talking about go much beyond
23 just the repository program.

24 Now, when we met with the Office of Procurement
25 Policy, and that's an office within OMB, they pointed out

1 to us that there are provisions within the Federal Procure-
2 ment Regulations that call for establishing a Federally
3 Funded Research and Development Center, commonly termed
4 an FFRDC, and that's governed under OMB policy letter
5 84 dash 1, and there are certain criteria for setting it up.

6 Basically, the head of the agency has to make a
7 finding that he has a requirement that calls for unbiased
8 advice and long-term technical continuity of the program.

9 We discussed our concerns with OMB and they felt
10 we had a classic case for which these provisions were es-
11 tablished.

12 There are some 30 FFRDC's currently established
13 in the country. You may recognize them as all of the
14 national labs or FFRDC's. The Aerospace Corporation, Jet
15 Propulsion Laboratory are examples of Federally Funded
16 Research and Development Centers.

17 So we have put together a request which we sent
18 to the Commission somewhere around Christmas time and laid
19 out our case for the Commission on why we thought we had a
20 classic case that would meet the criteria of OMB. And by
21 a five to zero vote the Commission voted to let us publish
22 a Notice of Intent which is the first step required by OMB.

23 That notice was published sometime in early March
24 and the OMB requires that we publish that notice three
25 times over a 90-day period. So the second notice has been

1 published, also. And in the first and second notice, we
2 also made aware to people who were interested that we have
3 available for your inspection a partial procurement package
4 which contained the draft statement of work, the draft :
5 management criteria, and the draft technical criteria. And
6 I think that's in your hand-out as well.

7 And we did ask commentors to comment on that and
8 give us advice as to -- I think we have four questions, I
9 can't remember them all but basically -- do we have anything
10 in here which unnecessarily drives up the price, do we
11 have anything in here which would unfairly preclude you from
12 competing, are there other issues which would be pertinent
13 to an FFRDC which we have not listed here which you think
14 we should include, and we ask for the level of specificity
15 in both the contract and the management and technical
16 criteria.

17 We ask for those comments in 45 days and the
18 commentary closed last Friday. I called back this morning
19 and I think as of Friday night we had comments from 15
20 different companies. I can characterize them all as saying
21 there were -- I don't think there were any show stoppers.
22 We've had no one who argued that we don't need one. We have
23 had some very good comments on those questions that we asked
24 that's going to cause us a lot of work to go back and revise
25 the material we have.

1 We're set up to do that the week of May 6th, and
2 somewhere towards the middle or latter part of May we will
3 be back to the Commission with an analysis of those comments
4 and a recommendation to the Commission either to proceed or
5 terminate.

6 If we elect to proceed then we would like to ask
7 the Commission to give us a decision so that in case they
8 agree with us we can then proceed to publish the Request
9 for Proposal at the end of the 90-day comment period on
10 the Notice of Intent, which would be somewhere around June.

11 And we would then give 60 days for people to
12 prepare a proposal and then we would evaluate the proposal
13 at that time. And if everything went just like that with-
14 out any glitches at all, somewhere towards Christmas time,
15 we might be under contract.

16 Now, the question people usually have is how does
17 this fit in with the other contracts, and the answer to
18 that question is anything that we do which we think is
19 going to be important to support our position in this hear-
20 ing must be absolutely free of conflict of interest. We
21 must have an arrangement whereby we can insure an institu-
22 tional continuation to support us in the hearing which is
23 going to take place way in the future.

24 So Mr. Davis has decided -- and I think rightly
25 so -- that the importance of the program and the duration

1 over which it's going to be conducted is too important to
2 rely only on individuals. We feel we must put in place an
3 institutional arrangement that will be responsible for
4 standing behind the individuals, for phasing individuals in
5 as others retire and go on to other things.

6 One of the things again is the mandatory provi-
7 sions of this contract will be conflict of interest. And
8 one of the differences as opposed to the current way in
9 which if you have a conflict you tell us and our only option
10 is to terminate, under this arrangement we will have the
11 right of refusal to allow the contractor to take any con-
12 tract.

13 So he will not be able to place a contract unless
14 we have been notified and elected not to object. That is
15 different from approval. It's a question of whether we will
16 elect to object or not on the basis of conflict of interest.

17 Now, we see this entity we're putting together
18 not being able to get up to speed on Day One and take on
19 the entire program we have in place. So we're trying to
20 put together now a transition plan in which if we do get
21 it in place what are the most important things that we have
22 first, and that can be from an absolute point of view where
23 our technical program stands internally. But also we have
24 to phase in DOE schedules and what kind of submissions will
25 DOE be giving us and who do we have on contract now for

1 technical support and are we going to have to retain those
2 for some period of time until the new guide can pick up that
3 effort.

4 : So it's a major effort that we're doing to bring
5 this thing into place.

6 We've had no one be able to tell us of any other
7 alternative other than establishing a Federally Funded
8 Research and Development Center that would match the
9 assurances we would get for long-term continuity and freedom
10 from conflict of interest.

11 Do you have any questions on that that I could
12 answer now? Yes, sir.

13 Would you identify yourself?

14 MR. WITTMAN: Yes, my name is Jack Wittman.

15 MR. BUNTING: Okay, Jack.

16 MR. WITTMAN: I'm from Utah. I'm just curious
17 to know what kind of group will bid on this. What dimen-
18 sions are you looking for?

19 MR. BUNTING: Very interesting question. Of
20 course you're looking for everything and you'd like for
21 them to have it now and have all those resources immediately
22 available.

23 Well had to have preliminary conversations with
24 a number of different concerns. People have called us
25 expressing interest. Unfortunately, you don't find anybody

1 out there that's got 30 people around twiddling their thumbs
2 waiting for you, having the right mix of skills that you
3 want.

4 So as a part of the criteria we're asking not only
5 who do you have but what commitments do you have from others
6 that you can bring on. You know, what time frame. And
7 that will be part of our evaluation criteria.

8 I guess it's okay for me to list the kinds of
9 people that have given comments. So far we've gotten com-
10 ments from SRI, Rand, Mitre, Southwest Research Institute,
11 Washington State University. That's all I can think off the
12 top of my head.

13 There were 15 people. Some of them have indicated
14 that the way that we do have the package worded today they
15 would find to be objectionable. I think the way we had it
16 we said we want the right of approval for all contracts.
17 We're willing to compromise and move it down to an option to
18 object.

19 Others have said that the requirements we've laid
20 in to have everything available now is too severe and we
21 should be more flexible to allow people to give us a plan
22 to develop that capability.

23 Others have indicated that the way we have the
24 criteria worded today puts too much emphasis on the tech-
25 nical aspects of the program. They point out that since

1 this is the first of an undertaking that the policy and
2 social issues involved there have equal importance. That
3 is something we're going to have to deal with when we get
4 back.

5 Any other questions? Linda?

6 Can you come to the microphone? I guess the
7 reporter can't hear you.

8 MS. LEHMAN: Linda Lehman, State of Minnesota.

9 Joe, I'm curious about the contracts that you've
10 recently issued out of Waste Management. Your technical
11 support contracts, for example, hydrology.

12 Will this preclude those contractors from continuing
13 or is there some method by which they can stay on
14 once this research is established?

15 MR. BUNTING: Okay. Nobody is going to be, to
16 my knowledge at this moment, cut off in midstream. So
17 whatever contract obligations we have we will probably,
18 I'm sure, continue those.

19 There may be some effort on our part to extend
20 existing contracts to try and bridge gaps. In other words,
21 if an existing contract runs out and it's maybe two, three,
22 four months before our time frame can get the FFRDC on
23 board, we will be looking for ways to scale back the level
24 of effort and try to bridge that gap. If possible.

25 We may find ourselves, because of who we put this

1 contract with, that we will go ahead and issue other con-
2 tracts for maybe two or three years in order to have an
3 orderly phase-in for the new guide.

4 So there's nothing precipitous that would cause
5 any contract to be stopped now.

6 Any other questions on that?

7 Okay, right now we're caught up with our schedule
8 at least and I'll turn it over to Avi and Phil. I guess
9 Phil first.

10 MR. ALTOMARE: You have a hand-out that was given
11 to you. It's the Pilot Project, Division of Waste Manage-
12 ment.

13 We're going to use the overhead, but some of you
14 in the back may have a little trouble seeing it.

15 The Pilot Project is group's responsibilities.
16 I'm going to give an overview of what the Pilot Project is
17 all about, then Avi Bender is going to go into a more
18 detailed description. Afterwards, during the breaks, we'll
19 be able to give you a demonstration.

20 With all that beep-beep-beep going on at the
21 computer, I was beginning to worry. I hope it will be all
22 right.

23 Brian (handling the viewgraphs) is on our planning
24 staff. We pressed him into service there.

25 The Pilot Project consists of two separate but
related items. A, what we have referred to as a licensing

1 Information Management System, which is a full-text docu-
2 ment capture, storage, and retrieval system. And/an open-
3 item management system, which is a process for identifying
4 and tracking to resolution issues related to the high-level
5 waste repository.

6 Now, I mentioned we referred to our system as
7 the Licensing Information Management System. We are now
8 referring to it as the Licensing Support System Pilot
9 Project, and the reason we did this was because there was
10 confusion as to whether DOE and NRC were developing separate
11 systems.

12 Our Pilot Project is to identify the requirements
13 of a system needed to support a licensing hearing, and to
14 do some evaluation of new technology that's coming on board.

15 It has been suggested we keep the old name. I
16 will have to give that some consideration, too.

17 The Pilot Project is part of an overall activity
18 which we generally refer to as streamlining the licensing
19 process. There are three breakdowns under that that we
20 use: Tailoring licensing process to the high-level waste
21 repository needs; building the licensing data base; and
22 resolving issues

23 There are many projects underneath those items,
24 but those that the licensing support system and the open-
25 item management system particularly support are the

1 negotiated rulemaking, which Chip Cameron and Ken Kalman
2 are going to discuss; a DOE/NRC agreement, which I am going
3 to talk about a little bit; DOE's development of a licensing
4 support system; and, of course, building a database for
5 the record of licensing decisions. Also the identification
6 and resolution of issues, which John Linehan is going to
7 talk about this afternoon.

8 Next View Graph, if you would.

9 Back in January of this year, Joe Bunting and
10 Ralph Stein signed an agreement which says how
11 this licensing support system is going to go. DOE agreed
12 to develop the licensing support system and it's a major
13 undertaking.

14 NRC will participate in the finding of the require-
15 ments of the system. The system will be used not just by
16 DOE but also by NRC, states, Indian tribes, and other
17 parties.

18 The goal of that system is to make sure that we
19 get licensing information out to the public early before
20 the actual license application.

21 We agreed to form a coordinating committee, and
22 I'll talk about that in a few minutes.

23 DOE supported the negotiated rulemaking concept.

24 We agreed to make our Pilot Project which we have under-
25 way available for DOE to work with us.

1 I'd like to go to the next viewgraph which is
2 unfortunately slightly out of place. It is the summary of
3 the April 22 meeting, if you'll look back a few pages.

4 The coordinating committee that we agreed to put
5 together in the DOE/NRC agreement has had two meetings. The
6 first meeting was February 20th, at which time we put to-
7 gether a draft charter, and we had a meeting just last week
8 where we approved the charter, which has one particularly
9 important item, that we want state and Indian tribes to
10 attend these meetings and actually participate in defining
11 what the requirements would be for this Licensing Support
12 System that DOE would develop.

13 There was one other major topic, and I think this
14 would be of interest to the people here. DOE put forth an
15 action memo which was their concept of what the licensing
16 support system would look like. This was sent out prior to
17 the meeting to the states and Indian tribes, and barring
18 bad mail delivery, hopefully you might have had a chance to
19 look at it.

20 That action memo stated that the licensing
21 support system would consist of several things and not just
22 the document management system.

23 They included the document management system,
24 which is what we're also working on. It included an issue
25 tracking system similar to what we're working with and what

1 we call the open-item management system. It included a
2 commitment tracking system to track DOE's commitments to
3 NRC, DOE -- I'm sorry, to the states and Indian tribes,
4 and I'm sure also in the reverse.

5 It included one other database, and that is a
6 database to keep the regulations that DOE would have to be
7 in compliance with, not just the federal regulations but
8 also the state regulations.

9 In the meeting that discussed the action memo,
10 there were two items that I would like to highlight. One,
11 for those who receive the document, Charlie Head
12 here clarified that the document was written prior to the
13 DOE/NRC agreement, and pointed out that the tone of the
14 document is that a system that would be built for DOE. It
15 is intended that the licensing support system will be used
16 by NRC, the states and the Indian tribes.

17 The other item that received considerable dis-
18 cussion was the document made an attempt to define what
19 would and what would not go into the system.

20 We had a few objections to this because it con-
21 sidered excluding such things as handwritten notes, comments
22 on drafts, and some drafts. The point that we made was
23 that there are situations where under discovery this inform-
24 ation would be required to be delivered.

25 Accordingly, DOE has agreed to go ahead and

1 complete a procedures and specifications for document
2 collection, and they're going to complete this by the end
3 of May and it will be discussed in the next meeting of the
4 Coordinating Committee which will be in June.

5 There were two other areas of discussion which
6 will be carried on into this June meeting. This was the
7 development of a common key word list, and what we're after
8 here is to develop a common set of key words by which we
9 identify documents so that when all these documents do come
10 together into one system, if we're using the same set of
11 key words we will be better able to find and identify the
12 documents that we want and call them up.

13 The last item is one of particular concern. The
14 DOE system that is being developed will not be available
15 until late 1988, perhaps, and maybe 1989. During that time
16 there's going to be a considerable number of documents that
17 are going to be produced. We don't want to lose those
18 documents and in particular we would like to capture them
19 in an electronic format.

20 To do this, in the next meeting we would like to
21 come forth with a standard format for electronic capture of
22 text and also a standard format for capturing digital
23 images of the documents, a new technology that we're look-
24 ing at for the document management system.

25 Next viewgraph.

1 Please feel free to ask questions. It makes it
2 easier for me.

3 What we're after in the licensing support system
4 is that we would like optimal access to licensing informa-
5 tion. We would like all of the information that would be
6 pertinent to the licensing hearing to be available to those
7 people who are interested in the high-level waste repository
8 and have it available to them well before the license
9 application.

10 If we can do this, this would help to identify
11 issues. We could hopefully move towards resolution of
12 those issues, but even if they are not resolved, to better
13 focus the issues. It would also make the information
14 available to the public, which we hope would reduce the time
15 that is required for the discovery phase of the licensing
16 process.

17 If we could do that, we could then perhaps meet
18 the three-year licensing period that has been required by
19 the Nuclear Waste Policy Act. This will be discussed a
20 little bit more by Chip and Ken in the negotiated rulemaking.

21 We want the licensing support system to be the
22 complete database for licensing decisions. It is not going
23 to be, however, just a computer and computer software.
24 There is a lot involved. There's also the procedures and
25 I've already alluded to the importance of those procedures

1 in identifying what will and what will not go into the
2 system.

3 There are participants, which has to include all
4 the people that would be involved in the licensing hearing,
5 the information database which must be complete, and the
6 technology.

7 The technology that has been developed and that
8 Avi is going to talk about in a little bit more detail,
9 is particularly encouraging because it now allows us to
10 use full text storage and retrieval, to capture electronic
11 digital images, and store very large databases and to trans-
12 mit large databases fairly easily.

13 Just quickly on the design requirements. We'll
14 be discussing these a little more later.

15 Obviously, we want maximum recall and precision
16 in gathering documents. With databases that could be on
17 the order of millions of documents, on-line query is extreme-
18 ly important, and in the meeting we had last week David
19 Berick raised a particular point that the system will also
20 have to be available to people who have very low income
21 and also very little capability for working with computers.

22 So hopefully we'll be able to design that re-
23 quirement into the system.

24 It has to be complete, containing all the docu-
25 ments relevant to the licensing process if we're going to

1 have confidence in it, and we'll have to be using common
2 procedures.

3 The system needs to be comprehensive. A major
4 concern at this time is that you have NRC, DOE, DQE field
5 offices, various states and Indian tribes all collecting
6 separate databases of information. We need to tie all that
7 information together and it needs to be an accurate database.

8 We probably will have to go to some means of
9 certifying submission of documents, and we'll also have to
10 validate the information that goes into the system.

11 If there are -- are there any questions? Yes.

12 MR. ERNSTUN: Kutret Ernstan, State of Missi-
13 ssippi.

14 I would like to ask you if this database will
15 have some capabilities for penalizing data at the Center.

16 MR. ALTOMARE: For penalizing data? I'm sorry.

17 MR. ERNSTUN: Analyzing data.

18 MR. ALTOMARE: Analyzing data.

19 No. Well, it depends on what sense you use the
20 word "analyzing". The advantage of having full text
21 storage and retrieval is that you can use numerous key words
22 or combinations of words to search for and identify informa-
23 tion in all documents that are in the database.

24 So you have the opportunity of pulling information
25 up from a large database and doing the analysis yourself.

1 Unfortunately, you have to be looking at the documents.

2 MR. ERNSTUN: The question is to contact this
3 data, this may mean the analysis of the data itself, should
4 that go into the database?

5 MR. ALTOMARE: Okay, that's a good question.

6 The licensing support system is considered pri-
7 marily a document storage and retrieval system. There are
8 also databases which contain just numerical data, data
9 that is being updated continuously and which is tapped by
10 computer programs that do analysis.

11 Now, we would anticipate that the licensing
12 support system would identify those other data bases and
13 would include all documentation related to those databases,
14 including any analysis that was done.

15 Are there any other questions? Yes. Jack?

16 MR. WITTMAN: On that same note, I was just
17 wondering if when we go through the discussions about the
18 capabilities of the system if there will be -- that's an
19 interesting idea to down load data sets from the host to
20 the remote location. And I don't want to jump ahead too
21 much, but if the remote location has indeed all of the data
22 there then that would be possible to do that kind of a
23 down loading so that any analysis could be done on a data
24 set that was out there by the states, the tribes, or who-
25 ever was interested.

1 MR. ALTOMARE: DOE is about to come out with a
2 statement of work for an RFP, and one of the first things
3 that will happen is that they will bring a contractor on
4 board to evaluate the various needs.

5 We have the concept as just mentioned as one where
6 you have remote access to the database and where you could
7 essentially tap into it, down load information to your
8 terminal and then work with it. This is a distinct possi-
9 bility and could very easily be arranged.

10 Yes, sir?

11 Would you mind using the mike?

12 MR. HUTCHINS: Yes.

13 MR. ALTOMARE: I've been asked for you to give
14 your name and organization, please.

15 MR. HUTCHINS: I'm John Hutchins with the Council
16 of Energy Resource Tribes.

17 Do I presume in this conversation that you would
18 provide hardware specifications for down loading? And while
19 you're thinking about that I'll tell you why I'm asking.
20 We're in the process with the Umatilla and Nez Perce tribes
21 of providing computer capability and station-to-station
22 links of data.

23 And I get a little timorous that all of a sudden
24 we're about to set up a system which will not be compatible
25 and which will accept down loading data from NRC.

1 MR. ALTOMARE: Very, very good point. And that
2 is one that is of considerable concern both now and when
3 the negotiated rulemaking gets started, which is going to
4 be discussed shortly.

5 We would like as much as possible, obviously, to
6 make the licensing support system as compatible as possible
7 with all of the systems that exist. And some capability
8 can be built in that way.

I would suggest that the Coordinating Committee
which has been set up to help DOE to identify these types
of problems, bring forth the information that they need to
help on their design. / would be a good place to bring up
the particular specifics of the system that it will have
to deal with.

15 And I would suggest that if possible we work
16 towards getting that coordinating group effective.

17 MR. JOHNSON: Carl Johnson, State of Nevada.

18 I'm a little concerned about this NRC/DOE agree-
19 ment. Were the states tribes asked for input in the de-
20 velopment of this particular agreement?

21 MR. ALTOMARE: Well, let's see -- Joe?

22 MR. BUNTING: Specifically, no. A place where we
23 hope to get your input is going to be discussed in the
24 next forum after lunch, I believe, on the negotiated rule-
25 making. That's where we really want your agreement.

1 Now, what we do provide in the agreement was the
2 Coordinating Committee, which is also a place for you to
3 get your input in. The only thing that we have done with
4 DOE is to get an agreement that says where NRC will not have
5 to handle a massive multiple delivery, 18-wheeler pulling
6 up in front of one of our buildings we happened to be living
7 in at that time, and after taking possession of hard copies
8 and have staff in the building in order to manage that
9 number of documents, we just don't feel it's physically
10 possible for us to have that many people to do that.

11 So the only agreement we have with DOE in doing
12 this is to work towards a system to try to eliminate that
13 from our own selfish purposes.

14 We also see that it would be useful to you, the
15 states and the tribes if you would want to tap into that.
16 Now, whether you do or not, that's your decision. What
17 you're going to see in the negotiated rulemaking an
18 approach for the Commission to have you participate in how
19 you would do that.

20 So what we did not ask you at that particular
21 time, whether or not you wanted to be included, we sort of
22 made the envelope there for you to participate if you choose
23 to.

24 MR. JOHNSON: I guess, Joe, I'm a little uncom-
25 fortable that a process is being developed here which will

1 essentially ask the tribes and states to be a party to and
2 participate in, yet they were not asked up front to be
3 involved in the development of it. And I'm still a little
4 uncomfortable about that.

5 We're coming in as kind of way behind the eight
6 ball and whatever you guys do we're going to have to accept.

7 MR. BUNTING: Well, we had thought having this
8 Coordinating Committee was the entree for you to come in
9 and participate in the development. All we did was get an
10 agreement by which you could come in and just do that.

11 What you have seen so far and what we've done,
12 we've done unilaterally ourselves just to prove a concept.

13 MR. JOHNSON: Well, I hope that's the case.

14 MR. ALTOMARE: We really don't want to close any
15 doors. And, frankly, the meetings we have in the coordinat-
16 ing group have been very good. As is happening now there
17 is good participation, and it is intended that states and
18 Indian tribes and the public be very much involved in
19 defining what the needs are of that system.

20 MS. VELE: I'm Kim Vele, attorney for the Stock-
21 bridge-Munsee tribe, and I just have a couple of comments.

22 First off, the April 22nd meeting we didn't re-
23 ceive any of that information regarding that meeting but a
24 couple of days before, which gave us little time to review
25 and provide any kind of meaningful input. So we didn't even

1 send a representative to that Coordinating Committee meeting.

2 I'm referring to the NRM information paper, and I
3 guess our concern is that so far there seems to be an indica-
4 tion that the Department of Energy would determine or
5 establish a no-access file but on the other hand require all
6 other interested parties to dump all of their relevant docu-
7 ments into the system. And I'm just wondering whether or
8 not the NRC has considered whether they have the authority
9 to compel, for instance, Indian tribes to submit to this
10 type of computer system.

11 Whether or not we'd have input in determining what
12 would be in the no-access file.

13 MR. ALTOMARE: You absolutely would. But let me
14 go back to your first question, first point.

15 I'm sorry you did not hear about the Coordinating
16 Committee meeting but let me say we are now presently plan-
17 ning one for mid-June and these are announced on both NRC
18 announcement system that you can call into and find what
19 meetings are going on and I believe DOE also has the same
20 system.

21 And I believe if you check with us later we can
22 arrange for you to get those telephone numbers.

23 MR. BUNTING: We do apologize for that. We learn-
24 ed only recently who the second round tribes are, and we
25 didn't have your names and addresses. And when we did get

1 them even for this meeting we've had some problem in reach-
2 ing contact. In some cases we have telephone numbers that
3 are wrong, in some cases we have addresses of P.O. boxes and
4 we cannot get anything expedited through a P.O. box.

5 If we want to Federal Express something we've got
6 to have a street address and that's something we can talk
7 about tomorrow, about how we do establish these mechanisms
8 to communicate to you timely.

9 We do normally go out and for the first round,
10 I think, visited people who wanted to talk to us and we have
11 explained to you our role, the Commission's role, how it
12 differs from DOE, and the kind of services we do and can
13 provide under the law and under the resources that the
14 Commission has given us.

15 And we'd be happy to do that with you. We can
16 set some time aside tomorrow or you can elect to have us
17 come and visit you at some convenient time, that's up to
18 you.

19 But we do apologize for the fact of the late
20 notice, and not only was it late for that one you didn't
21 get any notice for the first one, I'm sure, because we
22 didn't know you existed at that time or that you were being
23 funded by DOE.

24 So we just recently got that list and we're doing
25 the best we can now to incorporate that. I think we did

1 show you --

2 Were they on the list of TWIX? Yes.

3 We do have a list that we're trying to get TWIX's,
4 electronic communications to each person, but again we have
5 to have something other than a P.O. box to really make it
6 work. So we'd be willing to work with you and try to update
7 our list so we can get this information to you timely.

8 Now, you can answer the second question.

9 MR. ALTOMARE: Well, Chip wanted to -- Chip is
10 going to answer that directly. He's our person working on
11 negotiated rulemaking.

12 MR. CAMERON: I think it's important to clear up
13 one thing. The Coordinating Committee and the agreement
14 were looked on as necessary first steps in order for us to
15 start proceeding with this concept.

16 But I think that what we want to do is to use the
17 negotiated rulemaking that we'll be talking about to reach
18 some agreement on some of the technical assumptions and
19 protocols that are going to be important for operating this
20 particular system, and we don't want to try to preclude
21 anything in advance.

22 And in terms of the no-access file question, that
23 ties right into that. All people who would put their data
24 in the system would also have the ability to use no-access
25 file for any of their privileged information where they

1 would just have a surrogate listing.

2 And in terms of our authority, I think that we
3 have authority for anybody who wants to participate in our
4 licensing proceeding to set what the rules of discovery are
5 going to be, including this information management system.
6 But because there are so many different types of systems
7 out there as the gentleman from CERT alluded to, and be-
8 cause there are so many important points to consider.

9 That's why we want to use negotiated rulemaking
10 to bring in all of the interested parties, anybody who may
11 be affected by this, in the front to draft the proposed
12 rule instead of the usual method by us developing and
13 going on and issuing it for comment.

14 MR. ALTOMARE: Is there one more question?

15 MR. FRISHMAN: I've actually got two questions
16 that are unrelated.

17 MR. ALTOMARE: Would you mind giving your state
18 and name?

19 MR. FRISHMAN: Steve Frishman, Texas.

20 First of all, there's an up front assumption here
21 that the affected states and tribes are parties, and I'm
22 not quite satisfied that that's a reasonable assumption at
23 this point because we don't have any basis to know that
24 that assumption is correct.

25 And hooked onto that is with or without the

1 certain knowledge of parties status, what are the conse-
2 quences of non-compliance? What happens if we don't put our
3 stuff in?

4 MR. ALTOMARE: Chip, I think this is a good ques-
5 tion for you.

6 MR. FRISHMAN: Let me give you the other question,
7 too, because it's more on a technical end of the whole
8 system.

9 I see that the DOE is working on a standard
10 approach for interim document collection. Interim documents,
11 future documents, are only two of the three classes of
12 documents. There's a whole world of documents out there
13 right now. What's going to happen with those and what's
14 going to be the criteria for inclusion, exclusion, propri-
15 etary, so on?

16 MR. ALTOMARE: Chip will take the first one; I'll
17 take the second.

18 MR. CAMERON: Well, I guess in relation to the
19 first question you asked, Steve, about states having party
20 status, of course in our Rules of Practice there are
21 criteria that the Licensing Board will use to grant standing
22 to anybody who may be affected by the facility. At least
23 if it's within the zone of interest covered under the
24 Atomic Energy Act in NEPA.

25 The new procedural rule that the Commission will

1 be issuing shortly does revise the Rules of Practice to
2 state that a host state will definitely have full-party
3 status as well as affected Indian tribes, as defined under
4 applicable law.

5 In terms of the second part of that question, if
6 you don't want to put it in I guess the idea that we're
7 focusing on is that if you want to be a party to the pro-
8 ceeding you have to put it in.

9 MR. FRISHMAN: Maybe you'd want to expand a little
10 bit further. Suppose you don't want to be a party, you'd
11 rather be in the arena (?). I mean on the up-front end
12 where we at this point just hypothetically just don't know
13 what we want our status to be and may not until the actual
14 proceeding begins.

15 MR. CAMERON: Well, that's a problem in terms of
16 the objective that we have of trying to get data into the
17 system early. But, I mean, obviously people are not only
18 going to know whether they're going to be a party or not,
19 but they may want to come in under less than a full-party
20 status under 2.715C of our Regulations, and there's no way
21 that we're trying to force people into doing that.

22 I guess we're looking at this system as being
23 mutually beneficial to all parties or potential parties to
24 the system, so therefore that would encourage the use of
25 the system and participation in it.

1 But if you're not going to be a party or until you
2 decide to be a party to the proceeding, there's no way
3 that we can, you know, obviously force you to put your data
4 into the system.

5 MR. ALTOMARE: In terms of your second question,
6 unfortunately there is not a comprehensive system for inter-
7 im collection of documents, and we are very concerned about
8 this.

9 It is an area that we are attempting to move for-
10 ward with and that's why we were looking for the next meet-
11 ing of the Coordinating Committee to discuss how these
12 documents would be collected and how we could get a system
13 that would be more common between all parties that are in-
14 volved or concerned.

15 So definitely that is an area that we have to
16 address.

17 You mention there's a lot of documents that exist
18 out there now and that is correct. This came up in the
19 last coordinating meeting on April 22nd, and DOE made a
20 suggestion which I should repeat here.

21 They said that they would -- their goal would be
22 to collect in full text all documents relating to the licens-
23 ing that were produced after the Nuclear Waste Policy Act.
24 That would be, I guess, about January of 1983.

25 They also suggested, or they have asked, I

1 believe -- correct me if I'm wrong, Charlie -- Oakridge to
2 begin looking for 10 years back for all documents that
3 should be included in the system.

4 Now, we suggested that there should be more than
5 just that included in the system, that any documents that
6 would be used in the licensing process, regardless of how
7 far back it goes, we would also anticipate would be included
8 in the licensing support system.

9 We did not at that time, nor did anyone at the
10 meeting, have any better suggestion of how far back to go.
11 It is obviously an economic problem in terms of what docu-
12 ments you bring forth to put in the licensing support sys-
13 tem. But if there are any suggestions of what should be
14 done I believe DOE would be very interested in hearing your
15 recommendations.

16 I'd like to ask, if I may -- we don't want to cut
17 off any questions. We will be here today and tomorrow, so
18 please save your questions. But I think, if you don't mind,
19 we could perhaps move ahead with Avi's presentation, which
20 will go into more detail on the system, and then come back
21 to a questioning period after.

22 MR. BUNTING: A lot of the questions are getting
23 into the subject of negotiated rulemaking. I think if you
24 hear that it'll answer a lot of the questions I'm hearing
25 now about who makes who do what.

1 MR. BENDER: Good morning. If you do have any
2 questions, please feel free to interrupt during the present-
3 ation.

4 The objectives of the Pilot Project are two-fold,
5 as Phil mentioned. One is development of an open-item
6 management system and the other is a licensing support
7 system.

8 The reason why we're calling this a Pilot Project
9 is that the intent here is to demonstrate some concepts and
10 eventually move into an interim information management
11 system or licensing support system.

12 The open-item management system will be discussed
13 in greater detail in the afternoon session.

14 In the summer of '84 we had meetings with DOE,
15 states and tribal representatives. As I look at the audi-
16 ence I see many new faces, but I recall Mr. Dave Stevens,
17 then with the State of Washington, was in some of these
18 meetings; Dean Tousley. And at that time we discussed
19 general concepts for information management systems that
20 would be needed to support a three-year license review
21 requirements, both to resolve high-level waste issues and
22 make the documents accessible at an early enough stage to
23 minimize the need to rely on discovery.

24 Since that time, July of '85, we initiated a
25 Pilot Project to then take these concepts and move into

1 an actual demonstration of what these systems should do.

2 It's very easy to talk about generalities but a
3 picture is worth a thousand words and if you can actually
4 create the system it's much easier to describe what we're
5 looking to get from this support system. And I will be
6 giving a demonstration of that during the break.

7 The other achievements of the Pilot, and it's
8 really the interaction with the Department of Energy already
9 alluded to by Phil, in that we have this agreement with the
10 Department of Energy. We have a Coordinating Committee to
11 get together on a periodic basis and fully define the
12 nature and scope of the system needed to support three-year
13 licensing.

14 And this is really a unique opportunity for the
15 states and tribes and other participants to provide their
16 input at that time.

17 Our Pilot Project at this stage has about 5,000
18 documents of text in the system. The NRC is continuing to
19 convert as much information as they can within our limited
20 resources and budget into machine readable format. So that
21 at some point in the near future when the DOE system is
22 available we can then transfer that information to that
23 single system, licensing support system, being developed by
24 the Department of Energy.

25 But until such time we will continue with our

1 efforts in our move toward the interim information system.

2 Another side issue maybe not relevant to this
3 meeting, but our demonstration has also had some significant
4 impacts on the running of our own operations throughout
5 the NRC in that our existing record management procedures
6 are being reevaluated, and there is a move underway to
7 develop a new system much more like to what we have developed
8 so far, that is a full text storage and retrieval system.

9 This is really meant as a very simple concept. If
10 you think three years from now, maybe even earlier, there
11 should be a single system developed by the DOE. The NRC
12 will provide the Department of Energy with certified in-
13 formation of our licensing database. It would reside on
14 the DOE system and made acceptable to the public as well as
15 to the NRC.

16 We've already gone over the fact that we would
17 like to have the states and tribes and other participants
18 to the process contribute their information, and that may
19 be facilitated at some point in the near future through
20 this negotiated rulemaking process.

21 Phil had mentioned and Mr. Frishman alluded to
22 the fact that there are other systems in existence. That
23 is true. For example, there's a system out of BWIP,
24 systems that have been around for several years now, and
25 it's a problem in a way in that they each employ different

1 types of procedures for indexing documents.

2 I'm not personally familiar with the level of
3 quality control. I'm also not familiar whether any recall
4 and precision audits have been done on those systems to see
5 whether in fact you can capture the relevant documents.

6 The quickest way to tie those systems together is
7 through some kind of development of procedures. So until
8 such time that a physical system is available at headquart-
9 ers, these various databases should be linked together
10 through standardized procedures.

11 I've taken a relatively simply concept and made
12 it look overly complicated. All that I mean to show here
13 is that theoretically you would sit at a terminal, sign on
14 with your user ID, and then conduct a search for a parti-
15 cular document.

16 The search that you would be conducting would be
17 either of the full text or the surrogate of the document.
18 Full text enhanced means with the total document itself
19 or the surrogate on top of the document, the surrogate
20 being abstract key words, a short synopsis of what the
21 document is about, plus the full text.

22 The surrogate enhanced search would be simply
23 the abstract of the document with something of a built-in
24 Thesaurus.

25 Now, there are advantages to using either

1 approaches. The surrogate search is really advantageous to
2 the individual who is capturing the information and putting
3 it into the system because it's much simpler to take a
4 reported document, review it, and write a short abstract,
5 and put that into the system.

6 This, for example, is an existing approach for
7 the SALT project, but it has limitations. Studies
8 have shown that if you simply search the surrogate of a
9 document you're less likely to capture the relevant docu-
10 ments you are looking for. There is less recall and pre-
11 cision, because you are dependent on the congruity between
12 the indexing done by the individual doing the abstracts and
13 your ability to use the appropriate words to recall the
14 document.

15 Now, if you're simply searching the full text
16 you're faced with the same problem as well because if you're
17 searching for waste package and there's no reference in the
18 document to waste package but it's termed as a waste
19 canister, you would have missed that document as well.

20 So if you can have the benefits of both worlds
21 that's really the ideal approach for capturing documents
22 and improving your recall and precision.

23 Once you have conducted the search you can then
24 review the document on line, which I will show you at the
25 break. After having reviewed that, you may then be

1 interested in access of the document. There are a number
2 of choices that you have there.

3 If it's a relatively small document, you can down
4 load that into a PC, inserting a diskette and it's through
5 a program, getting the information on the terminal onto
6 the diskette and then printing it locally on your printer.

7 Or if it's a very short document of one or two
8 pages you can do what is termed a print screen command and
9 just very quickly get a copy of that document.

10 If you're dealing with a site characterization
11 plan, it would be ludicrous to really go through every
12 single page and have your printer print the whole document.
13 In that instance, what you would do is you would put a re-
14 quest for the document on the terminal and that request
15 conceptually could go to DOE and you would receive that
16 within several days.

17 The other possibility is there may be a reference
18 to a document in that if it's a large document it's readily
19 available in the local public document rooms, so you can
20 go and review that document there.

21 Then, of course, there are other types of informa-
22 tion in the system which cannot be digitized, such as core
23 samples. So the system should provide you with a reference
24 of how you can go about and look at these core samples for
25 whatever reason you want to do that. And then you eventually

1 sign off.

2 Whenever you sign onto the system you can review
3 the status of the document request to see whether in fact
4 the document is in the mail.

5 This is an enhanced version of a full text docu-
6 ment, enhanced version meaning that the very first portion
7 of the document is this header information which contains
8 a quick synopsis of what the document is about. It includes
9 such fields as the author, addressee, date, type of report
10 that is is -- a memo or so forth -- and other pertinent
11 information. That's a surrogate.

12 That will be the first thing that will come up on
13 the screen. That is then followed by the full text. And
14 you have the ability then to not only search on the header
15 but also on the text itself.

16 Next.

17 I hope I don't begin to bore you with overly
18 detailed schematics here, but as part of this pilot what we
19 have to look for is how can we integrate our existing
20 office automation procedures with a full text system. In
21 other words, documents are being created at this time by
22 word processors, so it's already available in an electronic
23 format. So there should be some kind of a way to go from
24 the word processing equipment directly to the full text
25 system.

1 Part of the Pilot Project is looking into the
2 various approaches we can use to get information into the
3 system. The way we have this equipment configured, the
4 database actually resides in Tampa, Florida. We have
5 access to the IBM information network. The only reason
6 this network was selected was we had a convenient contract-
7 ual vehicle within the agency that we tapped into, and
8 it just so happens that that provided us access to STAIRS,
9 which is a full text storage and retrieval system.

10 So we took our existing word processing equipment
11 and IBM PC's and we linked those together into a box called
12 the controller. The controller simply means that it's a
13 way of maintaining line control and allowing many pieces of
14 equipment terminals to interface directly with the IBM
15 information network.

16 There is also another way of getting access to
17 this database, and as we're doing this morning, and that's
18 through something known as 3101 emulation. It's simply
19 a communication diskette that you put into your PC, turn
20 the machine on, it lists a series of telephone numbers
21 which may be conveniently located to where you are, and
22 then you dial into the system, you provide a user ID, and
23 you then have literal access to all the memos and corres-
24 pondence that are now available in our docket control center.

25 This is the document capture and retrieval process.

1 We have quite a bit of incoming correspondence from states,
2 tribes and the public, and we really have no control in
3 the form or shape of those documents. Some of the corres-
4 pondence is handwritten, some are written on printers,
5 some are written on letter quality printers and so on.

6 So when you try to get such information into a
7 full text system you are faced with the problem of how to
8 get these multiple fonts and various types of documents
9 through an optical character reader.

10 The typical optical character readers on the
11 market today are really inefficient for large volumes of
12 information. So we've found out, based on the limited time
13 we've been doing this, that they are about 70 percent
14 effective in getting the documents in. What this optical
15 character reader does basically is you take a page of
16 information, you run it through a machine that looks like
17 a duplicating machine, it then takes the text and it digit-
18 izes it. That text is then loaded into a diskette, and
19 from the diskette it goes into this temporary holding file
20 an electronic file.

21 Items that we cannot run through the optical
22 character readers have to be rekeyed. That's a labor in-
23 tensive process and something that really should be avoided.

24 The other ways of getting this information into
25 this temporary electronic file, as I mentioned before, from

1 existing word processing equipment. If something is already
2 being typed on the word processing equipment, it's available
3 in machine readable format, no need to rekey it.

4 The other forms of getting information, and this
5 may be an approach to use in the very near future, is to
6 require contractors to submit their information on magnetic
7 tape or diskettes. Machine readable format, much easier
8 to get it into the system, no need for too much rekeying at
9 that stage.

10 For example, we're taking the Code of Federal
11 Regulations. We've gotten copies from the Government Print-
12 ing Office. We're taking that tape and we're now in the
13 process of loading that into the system.

14 An equivalent amount of time spent on typing that
15 would be several days with quite a few people working on
16 that.

17 So a lot of information is already available out
18 there in magnetic format. Once this information gets into
19 this electronic file, the next step is the header informa-
20 tion. Somebody's got to look at the document, you can't
21 get around that, and put this surrogate information that I
22 mentioned in the previous slide.

23 The people who are doing it right now in the
24 agency are those individuals who are intimately familiar
25 with the correspondence that is coming in. These are

1 and
2 the individuals who are now operating on manual/microfiche
3 system, so they have a pretty good understanding when a
document comes in as to how best to surrogate that.

4 And eventually that information is sent into the
5 full text system. The final product basically is a diskette
6 with the information, and we do a sent command and send it
7 over to the system in Tampa, Florida.

There are a number of problems in the --

Yes?

10 MR. DAVENPORT: Jim Davenport. Could you go back
11 to the previous slide?

12 The electronic file temporary there, the center
13 box --

14 MR. BENDER: Yes.

15 MR. DAVENPORT: Given the fact that you have the
16 capability that you've just described, would it not be
17 possible for all records or all physical pieces of paper or
18 other information produced by any party to be put into this
19 system notwithstanding whether it's a relevant document or
20 a pertinent document or an interesting document, but in fact
21 the entire field of all documents could be temporarily
22 placed in the system with a later determination to kick it
23 out if it was determined by --

24 MR. BENDER: Exactly. It's very difficult at
25 this point to draw bounds on what is a licensed relevant

1 document. Because essentially almost everything is subject
2 to discovery so you cannot make any artificial bounds. Our
3 approach at the NRC at this point is everything gets into
4 the system.

5 MR. DAVENPORT: Is it also possible to technically
6 or is the hardware existent so that the determination whether
7 to maintain it in that file can be made by one of a set of
8 people as opposed to one determiner?

9 In other words, could you have all parties make
10 a determination whether or not it should be maintained in
11 the system and kicked into the permanent files?

12 MR. BENDER: Yes, it is possible. The approach
13 we're using now is to get all the information in because
14 we're not sure what is relevant and what is not relevant.
15 In the near future we will have procedures in place, and
16 those procedures have got to be based on the legal aspects
17 of the nature and scope of the system.

18 MR. DAVENPORT: I understand that. What I'm try-
19 ing to do is gain a little information to later discuss
20 something with the negotiated rulemaking persons, and basic-
21 ally my question is, is it possible, given the hardware
22 and the system that you're thinking of, to allow multiple
23 parties to make determinations, pre-determinations, on
24 whether they want a document to stay in the system until a
25 determination of relevancy is made, as opposed to parties

1 making a determination in advance that it wasn't relevant
2 and therefore not putting it into the system?

3 Is it possible, given the hardware, to do that?
4 In other words, putting a station in all the respective
5 parties, states or tribes, giving them the capability to
6 say, "Yes, we want that document to stay in for the time
7 being."

8 MR. BENDER: Okay, I'll try once again. As far
9 as the NRC is concerned, all the information goes in. If
10 the state, for example, provides information at some point
11 and says, "Well, we changed our minds, we don't really want
12 to have that information in there," that's something that
13 really would have to be handled by the state.

14 But the NRC would have to certify that all the
15 documents that we provide are in there permanently.

16 MR. DAVENPORT: You're answering a policy question
17 about what you want to do and I'm asking a hardware
18 question.

19 MR. BUNTING: Yes, the hardware -- you could do
20 it. That's feasible. And whether it's done or not, we
21 think that's a matter that how you do that is something
22 that could be worked out in the negotiated rulemaking, just
23 how that thing would work.

24 MR. DAVENPORT: Right. Then preceding that
25 question I want to know if it's physically possible to do.

1 MR. BUNTING: Yes, it is.

2 MR. ALTOMARE: Could I perhaps answer your
3 question also?

4 MR. BUNTING: We can't hear you.

5 MR. ALTOMARE: Also to answer your question, be-
6 cause this is important, the system that we're looking to
7 eventually, however, after you get past the electronic
8 temporary file and it's decided to go into the system, will
9 not be able to be removed.

10 That is a permanent system we're looking to
11 probably be using if the technology proves out as it present-
12 ly appears to be to laser discs, we essentially digitize
13 the document onto the disc.

14 MR. DAVENPORT: I understand.

15 MR. ALTOMARE: And that will make a permanent
16 record at that time.

17 MR. DAVENPORT: Perhaps the more appropriate
18 question then is whether after it's included be dedicated
19 to a privileged sector where it may not be used as opposed
20 to remove from the system.

21 MR. ALTOMARE: Right.

22 MR. DAVENPORT: What I'm wondering here is do we
23 have a system here which is capable of deferring, of getting
24 all the documents in and then deferring the questions of
25 what is excludable rather than determining in advance that

1 they are excluded and therefore not ever allowing potential
2 discovery of them.

3 MR. ALTOMARE: As far as computer systems are
4 concerned, the capability could be made available to do
5 exactly what you said. As far as the human ability to sort
6 through what may be an impossible database, if you kept
7 doing that, continuously piling it up, that would be some-
8 thing that would have to be considered.

9 We are thinking in terms of millions of documents
10 by the time we get to the licensing hearing in 1991, and
11 obviously we want to have documents that are pertinent that
12 when you search the database you pull up information that
13 is meaningful. And this is going to have to be part of the
14 consideration in what goes into the system and how much you
15 hold in temporary files. But it can be done.

16 MR. BENDER: One of the technical problems that
17 is facing us in developing a full text system is we have
18 basically demonstrated the capability to develop a full
19 text system, but when you do a search of this system there
20 is something important that's missing, those are the images.

21 Many documents have graphs, pictures, photographs,
22 and the like. And at this point we do not have in our
23 system the capability to do a full text search and display
24 on the screen both the text and the image. The best we
25 can do so far, and it's really a vast improvement over

1 previous system, is the access to full text.

2 The other problem we have is how do we process
3 compound documents. A document comes into the system and
4 it has a photograph on it. Well, how can you then get the
5 total document into the system so that you can rest assured
6 that what you're searching is the complete text of the docu-
7 ment without having to go to a separate file and get access
8 to the figure or table?

9 There are various technologies that have been
10 developed very recently that will begin to provide some
11 solution to these problems. Those include laser discs
12 technology.

13 Given that a storage of text and images when
14 you're speaking of millions of documents require a vast
15 amount of storage, really the only practical solution in
16 the next few years will be to store that information on
17 laser discs.

18 I don't know whether you can see this but this
19 is -- it's kind of transparent -- this is a compact disc,
20 CD ROM, which is now used in the music industry. This
21 can hold 250,000 pages with images. The larger disc can
22 hold a million pages.

23 Conceivably, we can take our existing docket
24 control center and put all the information on one or two
25 laser discs. What does that mean for you, though?

1 It means that these discs can be replicated and
2 placed in local public document rooms. You would not have
3 to call in and deal with an on-line system. You would have
4 the current disc available of all the licensing information.

5 So this is really -- and there are systems in ex-
6 istence right now that employ this disc technology. For
7 example, the second phase of our Pilot Project we will be
8 looking into the system for digital display, a unique con-
9 cept developed by the Air and Space Museum in Washington,
10 D.C.

11 This is a system that has been able to capture
12 both text and images. It's a one of a kind system which
13 some have termed as a possible potential for revolution in
14 the record management industry.

15 We're going to be, I think, very fortunate to be
16 able to get access to that system during our Pilot Project
17 and demonstrate its applicability for the licensing support
18 system.

19 As we develop this information we will be sharing
20 that with the Department of Energy through our ongoing
21 Coordinating Committee meetings and through discussion with
22 DOE contractors.

23 So it appears that we're headed towards systems
24 that will be able to capture both text and images. The
25 main point here is to begin the process of converting

1 information into machine readable format.

2 Next.

3 So what are our future plans? As far as the
4 NRC Pilot Project, we will complete the process of convert-
5 ing records into a full text system. For the Pilot we've
6 only explored two areas, Nevada documents and NNWSI docu-
7 ments, and Congressional questions and answers, simply
8 because of the size of the database. We wanted to get a
9 limited database that was workable.

10 We've had quite a bit of success with that and
11 we're now looking to convert other documents as well into
12 the system so that in the near future when the DOE system
13 is available we could then transfer that information to
14 DOE so we have a single system in place.

15 As far as our interaction with the states and
16 tribes, we will be continuing to do that through the
17 coordinating meeting with DOE and continue to have sessions
18 such as we have this morning and obtain your feedback and
19 comments.

20 I guess that basically covers it. I think Phil
21 had gone over these other points before. Are there any
22 questions? Why don't we just take a break now and have
23 some coffee. I will be sitting by the terminal and provide
24 you with a demonstration for those who are interested.

25 (Whereupon, a short recess was taken.)

d/1 1 MS. RUSSELL: Could you all start coming back to
2 your seats, so we can get started with the next part of the
3 agenda, please.

4 We anticipated, probably, that since a lot of the
5 meeting was going to be a demonstration of the system, that
6 it would in fact break down and it has. So, we are having
7 someone in here at lunchtime to fix it, and hopefully, we
8 we will get it up and running well after that.

9 For the next part of the agenda, we are going to
10 be discussing negotiated rulemaking. The slides that we
11 have are not too clear, so I would strongly urge people to
12 go back to the table and on the far right side, my right,
13 are copies of the material about negotiated rulemaking. It
14 has a copy of the slides, as well as for the key points of
15 Chip's presentation. So, it is on that back table, on the
16 far right-hand side.

17 And one other very small administrative thing, and
18 it is very tacky that I even have to mention this. Unfor-
19 tunately, the federal government will not pay for people to
20 have coffee at meetings, and we would appreciate it greatly
21 if perhaps you all would donate a dollar to the cause. Thank
22 you.

23 And with that, I am going to introduce Chip
24 Cameron and Ken Kalman, and Ken is going to go first.
25

1 MR. KEN KALMAN: If everybody is all
2 settled down and if you will turn to the briefing charts
3 on negotiated rulemaking, I will begin my presentation.

4 As you can see from Page One of the briefing
5 chart, this concerns development of a rule on the submission
6 and management of records and documents related to the licens-
7 ing of a geologic repository for the disposal of high-level
8 radioactive waste. However, from the regulatory perspective,
9 negotiated rulemaking, which is the process that we intend to
10 use to develop this rule, is new and exciting. Consequently,
11 the process has been getting more press than the intent of
12 the rule itself.

13 The phrase "negotiated rulemaking" has tended to
14 become an abbreviated way of describing this particular pro-
15 ject that we are working on, and I will be discussing the
16 intents of what we are trying to do in this project.

17 If you will now turn to Page Two of the briefing
18 charts, you will see that the NRC staff has sent a paper
19 to the Commission informing them of their intent to use
20 negotiated rulemaking to develop the proposed changes to
21 10 CFR Part 2 for high-level waste. Part 2 provides the
22 rules of practice for licensing proceedings, and our changes
23 will only affect the licensing proceeding for the high-level
24 waste repository and will have no effect whatsoever on our
25 other licenses.

1 If you will move on to Page Three. Joe Bunting
2 already touched on this briefly, and I don't intend to take
3 too much more time with it. Prior to the passage of a
4 Nuclear Waste Policy Act, the NRC estimated it would take at
5 least 42 months for our licensing review. When the Act came
6 out, it provided 36 months, with a 12-month exception for
7 cause.

8 After passage of that Act, Chairman Palladino, of
9 the NRC, testified to Congress that the 36-month schedule
10 would be very tight, even with submission of a complete
11 and high quality application. And more recently, the DOE
12 Project Decision Schedule has shortened the review time down
13 to 27 months. The basic problem we have is how we are going
14 to cope with getting the licensing done in such a short period
15 of time.

16 If you will turn to Page Four, you can see the
17 solution that we have come up with is to streamline the
18 licensing process. We focused on three major areas. The
19 first entails the licensing process itself. What we have in
20 mind is revising the licensing process, to establish proce-
21 dures tailored to the high-level waste regulatory framework.
22 This is where the negotiated rulemaking comes in.

23 The second area we looked at is the licensing
24 data base itself, and this is pretty much what Avi was dis-
25 cussing. The idea is to develop a data base for the high-

DOD/4 1 level waste licensing proceeding.

2 And the third area is closing issues. That means
3 coming to closure on the identification and the resolution
4 of both generic and site specific issues.

5 A lot of the issues that have been cited on this
6 page have been discussed previously, and the remainder will
7 be discussed by other presenters here today.

8 If you will move to the nextviewgraph on Page Five.
9 A significant contributor to the length of the licensing
10 review is the time associated with sending, receiving, and
11 handling information and data. This includes docketed
12 correspondence, interrogatories, and service of documents
13 during adjudication.

14 We see electronic data processing as a means for
15 saving time in this area. This is why we want to change
16 10 CFR Part 2 to provide for the use of an electronic data
17 base for the licensing proceeding. DOE has already agreed
18 to establish this data base, and it is now up to us to
19 develop a rule for its use.

20 The objective of the rule requires DOE's
21 application and all supporting records be submitted in a
22 standardized electronic format. All parties to the proceed-
23 ing must submit the relevant data to the system in a timely
24 manner.

25 Mr. Frishman, I would like to point out that in

1 the information paper that we distributed we noted that
2 the intervenors may possess substantial data, and we believe
3 that negotiated rulemaking would encourage their participa-
4 tion. We also assure you that all parties will be provided
5 access at a minimal cost, and needless to say, periodic
6 written certification will be required and there will be
7 sanctions for withholding information.

8 If you will move on to the next briefing chart,
9 Page Six. We believe that rather than promulgating this
10 rule in the traditional manner, that we can develop a much
11 more acceptable and a better rule through negotiated rule-
12 making. Chip Cameron will be speaking later on the
13 intricacies of negotiated rulemaking; however, I would like
14 to briefly note the advantages of negotiated rulemaking.

15 First of all, it brings all the interested parties
16 together at the outset of developing the rule. There will be
17 shared points of view, inasmuch as NRC, DOE, the states,
18 tribes, utilities, and public interest groups will all be
19 represented. There will be a comprehensive treatment of the
20 issues. With all the groups together in one room, we feel
21 there should be greater efficiency through direct interaction.

22 Since all the parties will be working together to
23 develop the rule, we believe the comments will tend to be
24 more constructive than confrontational. And since the
25 affected parties will have so much input into the rules

1 development, we believe this will increase the acceptability
2 and the enforceability of the rule.

3 We also expect a shorter comment
4 period, because most of the affected parties have actually
5 developed the rule. There shouldn't be too many loose ends
6 to tie up. And through this savings in time, there will
7 also be a savings in money. As it stands right now, we
8 expect to have the final rule published within two years
9 from the start of this rulemaking.

10 One of the questions you are probably asking is
11 what if the negotiating group can't achieve consensus. We
12 feel that even if the group can't achieve consensus on their
13 proposed rule and the NRC has to take charge and
14 develop the rule in the traditional manner, we don't believe
15 that the negotiation has been wasted in any way. The issues
16 that they have resolved will be incorporated into our rule,
17 and we feel in turn we will still have a much more acceptable
18 rule.

19 If you will turn to Page Seven, you will see that
20 the only real disadvantages of negotiated rulemaking come
21 out if there is a lack of consensus. And as I said earlier,
22 there could be a delay in promulgating the rule, and there
23 might be an additional need for NRC resources. Those two
24 areas will cost in dollars and cents, but we don't really
25 expect it to be all that significant of an increase. And we

d/7 1 still expect it to be somewhat more efficient than tradi-
2 tional rulemaking.

3 If you will turn to the last page, I would like to
4 point out that we have already prepared a Commission paper
5 on our intent to use negotiated rulemaking to make the
6 changes. And Victor Stello, who is the new executive direc-
7 tor for operations at NRC, has directed the staff to develop
8 the Federal Register notice. As it stands right now, we
9 believe that the Commission will receive the draft notice
10 of intent by September 1, 1986.

11 Now, Chip Cameron will be discussing the intricacies
12 of negotiated rulemaking, and we will then be open for
13 questions.

14 MR. CHIP CAMERON: I just want to briefly go
15 through some of what this process of negotiated rulemaking
16 is all about and elaborate a little bit on what Ken said
17 about the concept itself, who the major actors are in this
18 process, what consensus means, what are the steps in negoti-
19 ated rulemaking, and talk a little bit about the experience
20 of other agencies in doing this.

21 In terms of the concept, it differs from the
22 traditional notice and comment rulemaking, in that the agency
23 gathers the affected parties together, face to face, over a
24 period of time to try to reach agreement on what the proposed
25 rule should look like. And if they do reach agreement, the

d/8
1 agency publishes the proposed rule for comment. And the
2 process is basically the same as a normal rulemaking process
3 after this point.

4 The basic idea is to try to get the parties to
5 establish a dialogue with each other and the agency on the
6 proposed rule, with the goal of negotiating an agreement
7 within a specified time frame. And if consensus is not
8 reached, the agency then moves forward to develop a rule on
9 its own.

10 In terms of the major actors that are involved
11 here, there is something called a convenor. There is a
12 facilitator or a mediator. There are the participants on
13 the negotiating committee, and there is the agency itself.

14 Now, the convenor is someone who, once the agency
15 decides to explore the potential of negotiated rulemaking --
16 a convenor may be used to develop a feasibility analysis
17 of the negotiation, identifying what parties and interests
18 will be affected, what issues are likely to be raised, whether
19 the parties believe it is in their best interest to negotiate,
20 making preliminary contacts with the parties and developing
21 a draft set of ground rules to use during the negotiations
22 themselves.

23 Now, the role of a convenor should be distinguished
24 from the role of what is called a facilitator or a mediator;
25 although, one person, either from outside the agency or from

1 inside the agency, can actually function to serve both roles.
2 And in the negotiated rulemakings that other agencies have
3 conducted, there has been some variations on how this has
4 been done.

5 I think in the FAA process they used one person
6 to be the convenor and the mediator for the rulemaking. But
7 the function of the mediator/facilitator, as opposed to the
8 convenor, is to assist in working out the agreement, to keep
9 the discussion going, to be the custodian for the process, so
10 that the people on the negotiating committee can worry about
11 the substance of the negotiation. So, essentially, the
12 mediator/facilitator is the person who is supposed to keep
13 the process running and keep the parties to the negotiation
14 moving towards closure, moving towards agreement.

15 Now, most negotiated rulemakings today have used
16 facilitators from outside the agency, rather than inside
17 the agency. The one exception has been the EPA negotiated
18 rulemaking on exemptions from the pesticide regulations.
19 The EPA used a facilitator from the EPA office of general
20 counsel.

21 The key is not whether the person is from inside
22 or outside the agency but rather how much mediation experi-
23 ence that person has, how well they get along with people,
24 do they have an instinctive awareness of group functioning,
25 so that they know how to move the process towards closure,

1 towards agreement.

2 One of the most important things is that the
3 facilitator be independent and neutral in terms of the
4 subject matter of the rulemaking.

5 In terms of the participants on the negotiating
6 committee, the agency has to determine, often with the help
7 of the convenor, what interests may be affected by the rule-
8 making and then determine what parties should represent
9 those interests. In this particular rulemaking, potential
10 interests, as Ken mentioned, would include Indian tribes,
11 state governments, public interest groups, either environ-
12 mental public interest groups or interest groups that are
13 pro energy development, national public interest groups,
14 local groups around the particular site, utilities, the
15 federal agencies, a number of interests.

16 Of course, potential parties could include the
17 individual states and tribes, individual public interest
18 groups, or in some cases, an interest could be represented
19 by a party such as, say, as National Resources Defense Council,
20 might represent all national environmental groups. Often-
21 times you have to try to combine, to have one party repre-
22 sent a number of organizations.

23 In terms of the states and tribes, obviously,
24 you could have first round affected states and tribes,
25 second round states and tribes, states and tribes that are

1 affected by transportation of the nuclear waste.

2 In terms of numbers, most of the negotiations to
3 date have involved anywhere between 18 and 25 people directly
4 represented on a negotiating committee. Each party has a
5 working group, a team, that assists the party in the nego-
6 tiation, and it has been very helpful in the negotiations to
7 date for the negotiating committee to use the mechanism of
8 sub-groups to work on various issues, then report to the
9 full committee for the full committee to address that
10 particular issue.

11 Only one person should speak for a party. In other
12 words, if the NRC was represented as a party to the negotia-
13 tion, which we plan to be, there would be one NRC representa-
14 tive, backed up by a negotiating team. And non-members of
15 the negotiating committee can come in and present information
16 to the committee. This is a technique that has been used in
17 past negotiations.

18 So, the NRC is at the point now where we want to
19 make preliminary contact with the potential parties, to see
20 who is interested in negotiations. And I think that this
21 meeting is an important step in that process.

22 The second step in the process is that we will be
23 going out with a Federal Register notice of intent to
24 negotiate. As Ken mentioned, this is due to the Commission
25 in September of 1986. But the Federal Register notice would

1 identify parties who we have made preliminary contact with
2 and their interest to negotiate. But it would also request
3 that anybody else who wants to be on the negotiating committee
4 put a request forward, and we would have criteria for adding
5 people to -- or, organizations to the negotiating committee.
6 For example, would the particular party be affected by the
7 rulemaking; are they adequately represented by someone
8 already on the committee?

9 In terms of the agency, it has been useful in
10 negotiations for the agency to be a party to the negotiation.
11 In other words, the NRC would sit as a party, just as anybody
12 else on the negotiating committee, because the willingness
13 of the negotiating group to negotiate depends on how much it
14 thinks it can influence the agency. And agency participation
15 fosters this, and it also increases the likelihood that the
16 agency will support and understand the basis for the negoti-
17 ation.

18 The agency usually indicates at the outset of the
19 negotiation, in the Federal Register notice of intent that I
20 mentioned, under what circumstances it will accept a consen-
21 sus that the group reaches. And criteria used by other agen-
22 cies is does it violate the statutory authority of the
23 agency, and is there a sufficient rationale developed for
24 the rule. I think the quote from the EPA notice of intent is
25 that the EPA would accept any consensus that resulted from

1/13 1 the group, unless it was inconsistent with their statutory
2 authority or otherwise unjustified.

3 In addition to participating as a party, the agency
4 will also provide administrative and technical support for
5 the negotiating committee, in terms of arranging meeting
6 rooms, providing a drafting service for agreements that the
7 committee may reach or may wish to review, legal and techni-
8 cal staff to provide information to the committee.

9 And one issue that I was asked at the break is
10 what about payment for travel expenses for the people
11 involved in the negotiating committee. First of all, the
12 committee is a federal advisory committee, under the Federal
13 Advisory Committee Act, and the Commission will have to
14 develop a federal advisory committee charter for the group,
15 which means that all of the meetings of the negotiating
16 group are going to be public meetings. They will be noticed
17 in the Federal Register. Minutes will be kept. But FACA
18 limits the payment of people on the negotiating committee to
19 per diem expenses, first of all.

20 Second of all, the NRC views participation by
21 states and tribes on a negotiating committee as a use of the
22 116 or 118 funds, and although that is obviously DOE's
23 decision, we anticipate that we will be supported on that.

24 One of the other issues that we are trying to
25 work out is what arrangements we should make for the parties

'14

1 who do not have a source of funds to attend the negotiating
2 committee sessions, and that is still something that has to
3 be resolved. One approach has been to establish some type
4 of a resource pool, where it would be administered by a
5 neutral party, for example, the National Institute for Dis-
6 pute Resolution or the American Arbitration Association, who
7 would pay for expenses where warranted for people who have
8 to attend the sessions. But that is one issue that we are
9 still working out.

10 In terms of consensus, the negotiating group sets
11 the ground rules for what will constitute consensus at the
12 beginning of the negotiation. And there are a number of
13 choices here: Do you require agreement on a total package?
14 In other words, on every issue. Or can you be a little bit
15 more flexible and say that, well, we can reach agreement --
16 we will reach agreement on some issues and on others we
17 can't. Do you have a formal signed agreement that is sub-
18 mitted to the agency?

19 Or do you do it more informally?
20 It doesn't have to be a formal submission.

21 And the other aspect: Does each party on the
22 negotiating committee have a veto or is it by majority vote?
23 Most of the negotiations -- I think all of them -- have run
24 on the fact that each party would have a veto, rather than a
25 majority vote. And in terms of how you define consensus, in

d/15 1 those circumstances, it doesn't have to be, "Well, we really
2 support this." It can be, "We can live with it," or, "We
3 won't object to it," in terms of reaching consensus. But
4 that will be an issue for the negotiating committee to
5 resolve when it is formed.

In terms of the process, we are working on various aspects of the negotiation now, and we are making preliminary contact with potential parties. We are thinking about who might be a good convenor and facilitator for this particular rulemaking. But the first formal step is going to be the issuance, in the Federal Register, of the notice of intent. And that notice will discuss the nature of the problem, why we want to do this particular rulemaking, why we think negotiation is feasible in this situation, who the convenor is going to be, who the facilitator/mediator will be, the identification of participants, including a call for other parties who want to participate, what the agency role will be, a tentative schedule for the rulemaking, the administrative support that will be provided by the agency, and the listing of the substantive issues that we want a negotiating committee to address.

This will be issued for public comment, and at the same time that we do this, we will send a draft Federal Advisory Committee Act Charter over to GSA for review. After the comments come back in, we will set the schedule for the

DO 1/16 1 negotiations. The first meeting of the negotiating committee will be to have the parties become familiar with each other, to try to set the logistics of the negotiation, in terms of meeting times and places, how you deal with issues such as contact with NRC decision-makers.

6 In the OSHA negotiations on trying to establish a benzene standard, the parties to the negotiation were always making end-runs around the committee, to the administrator of OSHA. 7 8 9 In the FAA experience, any attempt to deal with the administrator of FAA to see if the FAA administrator could influence 10 11 the negotiations was rebuffed by the agency.

12 The first sessions of the negotiating group will be an educational process, where the group will try to determine what information they need to make their decision. We are anticipating the use of a contractor to provide information on the technical aspects of this particular rulemaking. 13 14 15 16 17 18 After the committee goes through a certain number of educational sessions, then negotiations will begin.

19 There will be a date where, if consensus has not been reached, the agency will terminate the negotiations and proceed on its own. If consensus is reached, a draft proposed rule will be submitted to the Commission for approval. 20 21 22 23 24 It will be published in the Federal Register for comment. If it is appropriate, the negotiating committee will review 25 the comments informally, at least, without convening again,

1 and a draft final rule will be submitted to the Commission
2 for approval and a final rule will be promulgated.

3 In terms of other agencies, there have been four
4 completed negotiated rulemakings to date. OSHA attempted
5 one on the standard for occupational exposure to benzene.
6 The FAA completed a negotiated rulemaking on flight and duty
7 times regulations for pilots. And the EPA has done two. One
8 was on non-compliance penalties for vehicle emissions, and
9 the other one was on emergency exemptions from pesticide
10 regulations.

11 In terms of the OSHA attempt, the negotiating
12 committee reached an agreement in principle on a standard,
13 but it was never formally submitted to the agency. And it is
14 generally looked on as a failure, and no rule has been promul-
15 gated by OSHA on that particular subject since the committee
16 met. So, it is unclear what benefits were achieved by the
17 group.

18 In the other three negotiations, there has been at
19 least partial agreement. All of them resulted in a proposed
20 rule based on the negotiations. And the emergency exemptions
21 from pesticide registration was a full success. And I think
22 it is important to remember here, though, that even if there
23 isn't total consensus or even if consensus is not reached,
24 the process is still valuable.

25 As Ken noted, areas of concern can be identified,

1/18 1 differences between the parties can be narrowed. Alternatives
2 can be explored, and the agency and other parties to the
3 negotiating committee can get some valuable information.

4 In terms of the convenor, OSHA used a convenor and
5 a separate mediator. FAA used one person, who was provided
6 by the Federal Mediation and Conciliation Service, to the FAA.
7 And EPA, as I noted, did use an inside facilitator, someone
8 from inside the agency.

9 In terms of the parties, surprisingly enough, the
10 agencies have experienced no difficulty in dealing with the
11 representation issue. You often get diverse viewpoints from
12 the same interests. For example, in the OSHA negotiated
13 rulemaking, the petroleum and chemical industry could tolerate
14 a one part per million standard, which is what labor repre-
15 sented it wanted, much easier than the steel industry could.
16 So, there was a split there. The rubber industry was only
17 concerned with skin contact from benzene; so, their interests
18 were a little bit different.

19 The most important point that came out of the OSHA
20 negotiation is that the agencies should participate as a
21 party. OSHA did not participate, and this was a key factor
22 in not achieving success in that particular negotiation. In
23 fact, OSHA sort of undermined the process by issuing a draft
24 rule, not a proposed rule but a draft rule, right in the
25 middle of the negotiations.

d/19 1
2 In terms of numbers, EPA has successfully conducted
3 negotiations with as many as 23 parties. And in terms of
4 time frame, the OSHA negotiation took a little over a year.
5 Most of them take about a year, from the notice of intent to
6 negotiate, to when a proposed rule is issued. And the public
7 comments on the EPA proposed rule that was developed by con-
8 sensus were mostly from the participants in the negotiation
9 itself and were mostly supportive.

10 There was one other question at the break about the
11 relationship between the coordinating committee that is
12 operating now between DOE and NRC, that Phil Altomare talked
13 about, and the negotiating committee. The coordinating
14 committee is looking mainly at design of the system. The
15 negotiating committee is going to look at use of the system
16 and the licensing process. There are areas of overlap,
17 mainly on setting the protocols for format and the protocols
18 for what information is going to go into the system.

19 In this respect the coordinating committee is
20 developing information on those areas that will be used
21 along with any other information that the negotiating commit-
22 tee needs to reach a consensus on this particular issue.
23 So that, the coordinating committee is not for closing those
24 protocol issues. That is going to be left to the negotiating
25 committee.

1 Are there any questions for either Ken or myself
2 on this process?

3 MR. DAVENPORT: (Question not audible.)

4 MS. RUSSELL: Please use the microphone and identi-
5 fy yourself for the record.

6 MR. CAMERON: The question was from Jim Davenport
7 on Steve Frishman's question on what happens if Texas does
8 not participate in the negotiation and later becomes a party
9 to the licensing hearing. How will they be bound by this
10 particular rulemaking?

11 If someone does not participate -- if there are a
12 lot of parties, concerned parties, that don't participate in
13 the negotiated rulemaking, then it is not going to work,
14 obviously. But if there is a single party that does not
15 participate -- for example, if Texas did participate, I think
16 that we would want to try to move forward with negotiations,
17 and this rule would be published, as any proposed rule would,
18 for notice and comment. And I don't think that the rule
19 would be defective on legal grounds because Texas did not
20 participate, because they would have an opportunity to
21 comment on the rule and, therefore, would be bound by the
22 rule.

23 MR. FRISHMAN: Steve Frishman, Texas. I agree with
24 your answer, Chip.

25 MR. CAMERON: So, you are going to participate?

1/21 1 MR. FRISHMAN: No, I didn't say that. I said I
2 agreed with your answer.

3 MR. CAMERON: All right.

4 MR. FRISHMAN: That the remedies are all there on
5 your part.

6 A couple questions. One is, it seems to me that
7 you are making some out front decisions and assumptions
8 already. One is, I would like if you could go back and sort
9 of restate your case for the NRC being a negotiating party.
10 Your strongest case was that the OSHA attempt indicated that
11 it is important for the agency to be a party. But in the
12 explanation that you gave for that, you provided that --
13 or, you said that that is primarily because OSHA acted in
14 bad faith.

15 I don't presume that NRC would do that. I
16 would like to see -- I know that it is not mandatory that
17 you be a party. I would like to hear a little bit better
18 rationale for your having made this up front decision before
19 the whole issue is sort of before the public to discuss who
20 the legitimate parties may be. That is one question to
21 look at.

22 Another one is I didn't hear you make the distinc-
23 tion between facilitator and mediator and whether you have
24 any preconceived, sort of, demands on the system in that
25 area, as well. Those are just two to start with.

1 MR. CAMERON: Okay. In relation to your first
2 question; I don't want to characterize OSHA's draft rule as
3 being -- acting in bad faith. I am not exactly sure that
4 those were the circumstances that were involved. It just
5 didn't help the process, and it wasn't -- regardless of
6 whether they would have issued this draft rule for discus-
7 sion, the fact that they were not a party had other problems
8 connected with it other than that.

9 And I stated that the NRC will be a party; at
10 least the staff is anticipating that we will be a party.
11 But of course, the Commission is going to have to approve the
12 Federal Register notice of intent with that particular deci-
13 sion in it.

14 But in terms of rationale, I guess that if the
15 agency isn't a party to the negotiations, that there have been
16 problems with the agency really understanding what the group
17 discussions involved and being able to use that information
18 to draft a proposed rule. If the agency isn't a party, then
19 that sort of affects what the criteria might be for the agency
20 to accept the consensus that was developed. And I am not
21 sure how that would sort out in terms of what guarantees
22 the Commission would make to use the consensus. I don't
23 know.

24 I guess that it just makes sense to me that the
25 agency and DOE should be parties to the negotiation in order

1 to espouse their particular point of view on -- not DOE --
2 but at least in terms of NRC, on what is within our statutory
3 authority, what sort of policy constraints we might have.
4 I guess I would be interested in hearing what problems that
5 you would see with the NRC being a party to the negotiation.

6 And before you address that, just to deal with
7 your second question, the distinction between facilitator
8 and mediator has often been on what types of issues you are
9 trying to resolve. If there are strongly held opposing views
10 among the parties and you are in a negotiating situation --
11 because that is one criterion on which to decide whether to
12 negotiate -- but if you do have these strongly held views,
13 you would want to use someone with mediation skills to try
14 to resolve that opposition.

15 Whereas, if the views are not that much in
16 opposition, you can use a -- use the term "facilitator" as
17 someone who is going to keep the process going, and there
18 isn't this mediation flavor to it. And that is perhaps a
19 subtle distinction that is more important in theory than in
20 practice, but at least that is the way I see the difference.

21 MR. DAVID STEVENS: Before Steve gets back on the
22 other part, I would like -- you have triggered something
23 in terms of the difference between facilitation and media-
24 tion. Are you going to try to make a determination at the
25 outset as to the kind of individual you will want? Have you

1 thought about whether this lends itself for facilitation or
2 are there some issues within that that would require media-
3 tion? Because that is a decision that is pretty basic to the
4 type of discussions that will be held.

5 Have you been thinking, perhaps, that you will
6 attempt to facilitate this effort if it moves forward? But
7 would there be a possibility of bringing in a separate
8 mediator for one or two issues, or have a sub-set of negotia-
9 tions to work on particular points, and then go back to your
10 facilitation on the general negotiation?

11 MR. CAMERON: Well, that is a good suggestion. I
12 guess that the way we are looking at things now is that the
13 issues can be resolved through facilitation and that we
14 wouldn't need mediation involved in it. When we have some
15 more discussions with potentially affected parties and
16 people like yourself, maybe we will see that differently
17 and as we refine the issues a little bit more.

18 But the way I have been looking at it is that
19 facilitation would be appropriate in this situation.

20 MS. JUDY KANY: Judy Kany, State of Maine.

21 You aren't intending to negotiate on matters of
— health and safety,
22 public / I would certainly hope. I hope this is just subsid-
23 iary matters and that that would be absolutely clear that
24 that would be the case.

25 MR. CAMERON: Yes. This particular rulemaking is

5/25 1 going to deal with procedural issues purely, and it is not
2 going to have any direct public health and safety signifi-
3 cance. Although other agencies have dealt with public health
4 and safety issues in their negotiation, so it is not impossi-
5 ble to do it in that type of situation. You have to keep in
6 mind that agencies promulgate rules on public health and
7 safety all the time, and this is essentially the same thing
8 but having the people who might be affected by that particu-
9 lar rulemaking participate up front in the process.

10 MR. FRISHMAN: I was not raising the issue of
11 whether you were a party or not to air problems. I can see
12 a couple of problems that I will discuss. But I was primarily
13 trying to forewarn that in your notice of intent that partic-
14 ular area should be well rationalized, because it is very
15 much an open question.

16 MR. CAMERON: Okay.

17 MR. FRISHMAN: And one of the things I see in it,
18 as usual, in the extended thinking, and I know it is an
19 issue that has been brought up in some of the information you
20 have been looking at, and that is the role of OMB throughout
21 the rulemaking process, and how that may impact on your
22 decisions on whether to be a party or not, may impact on
23 DOE's positions on negotiating, because we at least allege
24 we have some evidence of that having happened in other rule-
25 making.

1 I think that contributes to your decision on how
2 you want to play this.

3 MR. CAMERON: Okay. In terms of OMB, we are in a
4 little bit different posture than the other agencies. OMB
5 gets involved in this process in two ways: One under Execu-
6 tive Order 12291, Federal Regulation. And they used to
7 get involved with it because they were the keeper of agency
8 requests to form advisory committees. GSA has that responsi-
9 bility now. But the Commission has always taken a position,
10 like other independent agencies, that we are not subject to
11 the executive order, and that has been accepted by the admin-
12 istration.

13 -----
14
15 We are not subject to 12291, although
16 we do perform a regulatory analysis that is similar to the
17 analysis that is set out in 12291. So, I don't think that
18 we are going to run into OMB problems on the particular
19 rulemaking.

20 In terms of DOE, on the Federal Advisory Committee
21 Act issue, since they are not the one -- they are just going
22 to be a member of the advisory committee, so they are not
23 going to have to deal with that. And it is not their rule-
24 making, so that they won't have any problems under Executive
25 Order 12291.

1 Now, I can't speak to how the OMB budget process,
2 as opposed to 12291 and FACA, will affect either NRC or DOE.

3 MR. DEAN TOUSLEY: Dean Tousley, Yakima Nation.

4 Have you come to any resolution as to whether you
5 intend to permit each affected tribe and state that wishes
6 to to participate individually in the negotiated rulemaking?
7 Or can we look forward to being told to find one or two
8 representatives to represent particular constituencies?

9 MR. CAMERON: That is still an open issue, and it
10 depends on both the interest and ideas that the individual
11 states and tribes have on that issue. I think we would
12 rather err on the side of over including people, than under
13 including people. And certainly, I don't think that we want
14 to have parties whose interests are really different be
15 represented by someone that has a different interest. I mean,
16 there are any number of ways to cut it, and we would apprec-
17 iate any suggestions that you or other people have on those
18 issues.

19 For example -- I mean, it is basically -- we are
20 focusing on the first repository now, but the second reposi-
21 tory states and tribes obviously should participate in the
22 negotiating committee. But can you get one state to represent
23 other states? Can the CERT organization or NCAI
24 speak for the various Indian tribes? There are a lot of
25 problems along those lines, and we want to try to work it out

d/28 1 in the most rational way possible.

2 But I guess at this point we realize that there are
3 a number of different combinations. I mean, maybe transpor-
4 tation states could possibly be represented by one state.
5 But in terms of individual sites, I don't think that we want
6 to combine -- we don't want to have Nevada representing
7 Washington and Texas.

8 MR. TOUSLEY: So, have you got any preliminary
9 ideas about who you might like to have as facilitator and
10 mediator?

11 MR. CAMERON: Well, there has been a number of
12 suggestions, and I would rather not get into specific names
13 of people at this point. But basically, our discussion has
14 focused on whether there is someone inside the agency who
15 might be good at facilitation and also independent from the
16 rulemaking area or whether we want to go outside to either
17 Federal Mediation and Conciliation Service, who will provide
18 a facilitator or a mediator to us at no cost, from what I
19 understand, or whether we want to go out to a private con-
20 tractor, either someone who has been involved in waste
21 management issues or someone who has been involved with the
22 NRC.

23 And I guess that our main concern is to get someone
24 who is good and will be perceived as impartial. And if we
25 have to do that through a contract, we will do that through

1 a contract. If we can do it through the Federal Mediation
2 and Conciliation Service, we will do it that way. If we can
3 do it inside the agency, we will do that. And that is some-
4 thing that we really have to resolve fairly soon, that we
5 can have this particular person start working with the affect-
6 ed parties.

7 MR. TOUSLEY: (Question not audible.)

8 MR. CAMERON: The question was would the choice
9 of the facilitator be decided before the notice of intent,
10 and I would say, yes, so that we can get the facilitator for
11 this rulemaking, drafting some ground rules for how the
12 negotiation is going to work and making some contacts with
13 the potentially affected parties and getting ideas about
14 how interests may be grouped, the type of issues that you
15 brought up earlier.

16 MR. STEVENS: David Stevens again.

17 I am kind of interested -- since this is a depar-
18 ture in the normal process of rulemaking -- first for NRC,
19 how the question of precedent would be viewed. I am not
20 sure whether you want to fully explain all the internal
21 ways in which you have come to this point or what your
22 expectations are. But do you consider to have a fairly strong
23 mandate to move ahead, and if so, would that mandate be con-
24 sistent throughout the process? Or would there be some voice
25 from, perhaps, as an example, the general counsel's office,

1 that says that, "We may be getting into an area here which
2 may be difficult for us in some other areas of the agency's
3 activities in the future"? Is this something we can look
4 forward to-- if a start is made and assuming there are some
5 of the advantages that you determine and enough parties
6 determine that that is appropriate--letting the process
7 unfold without some nagging suspicion that at some point in
8 the process there will be some withdrawal symptoms from NRC?

9 MR. CAMERON: Well, I can say a couple of things
10 on that. One is that the Executive Director for Operations
11 is very supportive of using this process in this particular
12 situation and has informed the Commission that we are going
13 to do that. And as far as I can tell, and maybe Joe Bunting
14 can give a little better reading on this, the Commission is
15 also supportive of using it. I mean, the other point is that
16 we are dealing with a Commission that changes, and regard-
17 less of whether you are talking about negotiated rulemaking
18 or any other issue, you are never completely guaranteed that
19 you are going to get completely consistent results.

20 But we do feel that we have enough support so that
21 we can move forward on this without being afraid of someone
22 pulling the rug out from under us. And as I said, the EDO,
23 the Executive Director for Operations,^{is} very supportive of the
24 idea. And I know -- Joe, do you want to say anything
25 about the Commission's -- (Pause.)

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1 MR. BUNTING: Well, we have had those kinds of
2 concerns ourselves, and far be it for me to say here that
3 it is a foregone conclusion that the Commission will endorse
4 it. The EDO did feel so strongly about it that he directed
5 us to move forward in this direction, prepare the Federal
6 Register notice and present it to the Commission for deci-
7 sion in September.

8 I can say that he briefed the Commission on the con-
9 cept on the same day, at the meeting of the National Associa-
10 tion of Utility Rate Commissioners. I think the commissio-
11 ners found it very interesting and they look forward to seeing
12 it, as a way in which they could achieve efficiencies in the
13 licensing process.

14 I have spoken to each of the commissioners' assis-
15 tants about it, and they warmly received it. Now, on the
16 other hand, let me say that I am not sure that any of those
17 people have heard any words from the Office of General Coun-
18 sel about it and whether or not they would get some advice
19 along the lines that you suggested. That avenue is still a
20 distinct possibility. I don't think it is very probable, but
21 it is a distinct possibility.

22 So, the staff has been directed to move forward.
23 The paper is at the Commission to inform them of that, that
24 we are moving forward. And I don't think that our executive
25 director for operation would have made that decision to do

a/32 1 that without feeling pretty confident that he has a fair
2 amount of support, because it does involve quite a bit of
3 expense, in terms of money and staff resources, to move for-
4 ward with this next phase. So, that is the limit of what I
5 can tell you of how confident we are.

6 MR. CAMERON: And some of these things are going to
7 be worked out by -- when the notice of intent is issued, at
8 least we will have a reading from the Commission on what they
9 want to do along those lines.

10 Any other questions?

11 MR. BUNTING: Let me say that I would suppose the
12 Commission would still be influenced by any comments they
13 may hear from states and tribes as a result of us sharing
14 this with you now. And certainly that is one of the purposes
15 in doing that. So, if you have strong views one way or the
16 other, perhaps you should let those be known.

17 MR. FRISHMAN: A couple more. The first one: You
18 say in your notice you are going to try to identify, at
19 least tentatively, some of the issues.

20 MR. CAMERON: Yes.

21 MR. FRISHMAN: How do those issues ever get formal-
22 ized or to some point of limitation? Is there -- at the open-
23 ing, is there going to be an effort made to limit the issues,
24 or is there going to be flexibility allowed to the negotia-
25 tors to add issues? And that could run up against unantici-

1 pated issues, and resolving them could run up against your
2 milestone or your "drop dead" date. That is one question.

3 Why don't we go through that one, and then I will
4 have just one other.

5 MR. CAMERON: Well, I think that there would be
6 flexibility for the negotiating committee to decide what
7 issues should be added or what issues may be irrelevant. I
8 think that our concern would be that we don't throw in some
9 issues that, although are important to people on the commit-
10 tee, may not be appropriate for this particular rulemaking.

11 But the basic answer is that I think that that is
12 something that the negotiating committee will work out at
13 the beginning, as exactly -- has the agency framed the issues
14 correctly and what other issues should be added. And keep in
15 mind that this notice will be -- will solicit public comment
16 on all the issues, the one that you flagged earlier and on
17 whether the issues that the agency has in the notice are the
18 appropriate issues, and should there be other issues added.

19 But even then, there will still be flexibility for
20 the negotiating committee.

21 MR. FRISHMAN: Okay. That is about as clear as it
22 is going to get for now, I guess.

23 The other is if you go through this process and you
24 end up with a failure for consensus, what is the status of
25 the record of the negotiation? Does that become a piece of a

1 record of rulemaking or does it just go away?

2 MR. CAMERON: It doesn't go away. It will become
3 relevant to the rulemaking record that is developed by the
4 agency. If we do have to go it alone on either parts of it
5 or on the total package, we still have to come up with a
6 rationale for the rulemaking under the Administrative Pro-
7 cedure Act and any other statutory responsibilities that we
8 have. And we are going to have to address what the negotiat-
9 ing committee did. I don't see any way around not address-
10 ing that part of it.

11 So, in terms of what a review in court would do,
12 I mean, that is going to depend on how well the rationale
13 -- how good the rationale is that the agency developed and
14 what sort of scrutiny they give the particular rule. But I
15 think that we are going to have to deal with that.

16 MS. KANY: Judy Kany, State of Maine.

17 I just wanted to share a comment with you, to ask
18 you to share with your commissioners. And that is that just
19 the idea of negotiated rulemaking by the Nuclear Regulatory
20 Commission scares the hell out of me, and I know I can speak
21 for almost every single citizen in the State of Maine. We
22 do not feel adequately protected by your current rule on
23 licensing high-level radioactive waste repositories. We do
24 not feel adequately protected by the EPA's standards, and
25 we certainly do not feel adequately protected by the DOE

d/35 1 guidelines, if they were indeed implementing all that are
2 within their rule.

3 And therefore, I would like to pass that -- have
4 that message passed on, that your agency, of all agencies in
5 the federal government, and your particular area, the high-
6 level radioactive waste disposal portion particularly seems
7 inappropriate, even though you are just perhaps beginning
8 with just procedural matters. It does seem inappropriate to
9 me, and I know I can speak for both branches of government,
10 as well as for the citizens of the entire State of Maine.

11 MR. CAMERON: Well, why does it seem inappropriate?

12 MS. KANY: Your role, your statutory responsibility
13 is one of really protecting the public. And to regulate, not
14 in the economic -- not over the economics -- because the econ-
15 omics, other than to assure a protection that safety matters
16 in the long run are protected, and that is the only time
17 ordinarily that I see you having a role in looking at financial
18 responsibility.

19 For instance, could a particular utility -- could
20 it generally afford long-run safety procedures. That is when
21 you generally have evaluated financial responsibility. And
22 that is the only area in which economics ordinarily comes in
23 to your regulatory responsibility. FERC is really the
24 regulatory agency generally having to do with nuclear power
25 or anything that touches upon it.

1/36 1 Now, certainly, as far as repositories, you would
2 want to make certain that there is adequate funding for
3 safety over long-term development. So, I just -- your role
4 is one of assuring the safety of the public, and that is why
5 you were separated as an agency from the old Atomic Energy
6 Commission, why the two were separated out, the Department of
7 Energy and the Nuclear Regulatory Commission. Your role is
8 one of assuring safety for citizens of the United States and
9 of the world.

10 And somehow negotiating among interested parties,
11 even in procedural matters, does not seem to be consistent
12 with your statutory role and responsibility.

13 MR. CAMERON: Well, I would just point out to you --

14 MS. KANY: And I really am very concerned about it.

15 MR. CAMERON: -- that the regular rulemaking process,
16 where you don't go through negotiation, under our traditions
17 of government and under the Administrative Procedure Act, any
18 rule that we promulgate or that we propose has to be subjected
19 to public review and comment. And that is the same thing
20 that is going to happen on this rule. It doesn't have any-
21 thing to do with financial responsibility.

22 One of the basic ideas here is that we can be
23 assured of having a comprehensive data base for licensing,
24 so that an adequate licensing decision, one way or the other,
25 can be made. And that is why I think it is in the interest

1 of public health and safety and in the interest of any state
2 or tribe where a proposed site may be to be interested in
3 this type of rulemaking. We don't want to try to get into
4 an adversarial mode on this one.

5 But thanks for the comment.

6 MS. KANY: Right. Yes. I do see you as being
7 the regulator and that you should be in an adversarial mode
8 on this particularly.

9 MR. CAMERON: Any other comments?

10 (No response.)

11 MR. CAMERON: Well, I think we break for lunch
12 now.

13 MS. RUSSELL: I just want to let you know that on
14 the back table -- I know people have been interested in the
15 NRC/DOE agreement on the licensing system.-- there are copies
16 of that available. There are also kind of informational
17 materials available about the whole process of negotiated
18 rulemaking.

19 Avi is going to be doing about a 10 minute demon-
20 stration of the system, if you are interested, right before
21 lunch. We will do the demos again this afternoon, but he is
22 available now. And as of yet, we have not had an overwhelm-
23 ing response in our request for a dollar for coffee, so we
24 would appreciate it if you could perhaps dig deep into your
25 pockets. And we will see you back here around 1:30.

(Whereupon, at 12:07 p.m., the hearing was recessed
to reconvene at 1:30 p.m., the same day, April 29, 1986.)

1 A F T E R N O O N S E S S I O N

2 1:38 p.m.

3 MS. RUSSELL: We have the licensing support
4 system up and running now, so, hopefully, when the next
5 demo comes up, it will still be up and running and you can
6 see how it works.

7 The first part of the agenda for this afternoon
8 is going to be dealing with allegations in the nuclear
9 waste program. Joe Bunting is going to start off, and
10 hopefully, when he is done, Chip Cameron will be back to
11 finish the rest of it. Here is Joe.

12 MR. JOE BUNTING: The subject of allegations
13 covers both allegations, investigations, and enforcement.
14 And I am not really going to say a whole lot about it,
15 except to tell you that we have underway a systematic inves-
16 tigation looking into the adequacy of existing procedures
17 as they might apply to the high-level waste repository
18 licensing program.

19 As you can well imagine, the procedures that the
20 Commission has in place today were put in place to deal with
21 the licensee who is a commercial entity. And those proce-
22 dures began to take effect at the time at which the Commission
23 has some enforcement authority. And the way the rules are
24 today that authority takes place with the filing of the
25 application.

1 So, number one, the existing procedures, if we are
2 to use those for the high-level waste repository program,
3 would only take place after the application was filed. We
4 are dealing with a different kind of licensing process here;
5 one in which formal submissions are required both by our
6 rules and by the Nuclear Waste Policy Act. And they come in
7 before the application is filed, and we have no way to exer-
8 cise any enforcement action over the accuracy of those docu-
9 ments or completeness of those documents.

10 Except we could reserve whatever we wanted to
11 reserve and what we found, and then make it a fact after
12 the applications were filed.

13 Questions come up also have to do with how adequate
14 are the understandings between the two federal agencies over
15 how to treat the investigation of any particular allegation.
16 Not being the expert, I am going to try to cover for Chip.
17 It is my understanding that if we were to get an allegation
18 for a typical licensee and it had to do with some impropriety
19 on the part of the licensee or the licensee's employees or
20 contractors, if we were notified of that prior to the receipt
21 of the application, our current procedures would be to notify
22 the applicant, potential applicant, that we have this allega-
23 tion.

24 We would tell him what it was. We would not dis-
25 close the confidentiality of the person who made the allegation.

1 We would protect that. And we would tell the applicant that
2 we would expect that allegation to be addressed in full when
3 the application is tendered. When it came in, if the allega-
4 tion was not handled to our satisfaction, the investigation
5 was not handled to our satisfaction, or if now another allega-
6 tion is filed after the application is received, then the
7 Commission has discretion to conduct its own investigation.

8 If after that investigation evidence was sufficient
9 to warrant prosecution -- let's say a material false state-
10 ment, for instance -- we would then turn that over to the
11 Department of Justice for prosecution. We could in lesser
12 cases fine the applicant. The question is how adequate are
13 these existing procedures when the applicant is another
14 agency of the federal government. Does the Department of
15 Energy recognize that the Nuclear Regulatory Commission has
16 the authority to conduct investigations? After all, the
17 Department of Energy has its own inspector general, which is
18 established by law, independent from the secretary.

19 But these are things we do not have the answers
20 to yet, but the purpose of this is to tell you, again, that
21 we are thinking about them. These are not the kinds of
22 situations that we would like to have just found out about in
23 the course of a licensing proceeding, and then time strings
24 out while we make these investigations and determinations as
25 to how and what changes need to be made in our procedures.

1 So, again, as a part of the streamlining process,
2 we are trying to look at all there is in the process to find
3 potential impediments that would string out this hearing.
4 And we are trying to put some effort on those issues today
5 to try and resolve them before the hearing gets here.

6 Just to digress a minute and go back to the case of
7 a fine, if the Commission were to fine. the Department of
8 Energy and they elected not to pay, I don't know what all we
9 could do about it. Those are some of the things we have to
10 think about. If it is a commercial entity, that probably is
11 a sufficient way to motiviate them. I am not sure it is the
12 appropriate mechanism to motivate the federal agency.

13 In a commercial entity, if an individual makes a
14 material false statement, the government can prosecute the
15 individual. There are some questions whether you can do
16 that to a federal employee. So, maybe some other method may
17 be needed. For instance, maybe the person needs to be banned
18 from the program, as opposed to prosecution, if the federal
19 law says you can't prosecute a federal employee for acts he
20 did on the behalf of the department.

21 These are uncertainties that we have. They are
22 uncertainties; we do not have answers. So, that is to let
23 you know that we are looking at it. If you have any ideas
24 along these lines that you would like us to pursue, we would
25 be glad to hear from you. If you have suggestions as to how

1 the system should work, we would be glad to hear from you.
2 Our course of action today is that we are going to take a
3 systematic look at this whole procedure, and we are going
4 to sit back and say, without being constrained by anything
5 that is in place at the moment, we would like to look and see
6 how we would like this process to work.

7 And then we are going to take a look at the existing
8 procedures and say, okay, is it feasible to modify the current
9 procedures and change them so that they will apply equally
10 well to the commercial side, as well as the government side.
11 If we can, we will. If we can't, then we will propose to set
12 up a separate procedure, much like we are for Part 2 for hand-
13 ing the rules and records, for allegations, investigations,
14 and enforcement.

15 We have reached no conclusion on that yet, and it
16 is just to let you know the status of something else that we
17 are looking at.

18 Mr. Cameron, would you like to add anything at
19 all?

20 MR. CAMERON: No, I don't think so at this time.

21 MR. BUNTING: Okay. Does anyone have any questions?
22 If not, that is all we are going to say about that. It is
23 just to let you know we are looking at it. These are the
24 kinds of things we are trying to target resources on, to get
25 impediments out of the way before we get in a crunch. Whether

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1 you have any ideas on this particular topic or anything else
2 that you are familiar with in NRC's proceeding that may be
3 a target of opportunity for us to focus on, in order to
4 achieve some efficiencies in the licensing process, we would
5 very much like to hear from you.

6 I will turn this over now to Avi Bender, on the
7 open item tracking system.

8 MR. AVI BENDER: The objectives of the open item
9 management system is to develop some kind of a process to
10 identify issues, track them to resolutions as early as possi-
11 ble, so by the time we get to discovery, hopefully, many of
12 these contentious points can be put aside.

13 We have at this point developed a prototype of the
14 system, and before I go into a description, what I would like
15 to do is give you a little bit of a history of how we got to
16 where we are. And again, this goes back to that famous
17 summer of '84.

18 At that time we met again with the states and the
19 tribes and we presented a general concept for a system.
20 Keeping in mind now that we are talking about a system now
21 that is not just the computer part of it, but it is the
22 participants, the information, the procedures, and then
23 assistance with some kind of computer technology for handling
24 the information.

25 And basically, the way the system was structured

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1 was that issues obviously could be raised by anyone in this
2 process. Those would be brought to the attention of the NRC,
3 and then they would somehow be filtered and go through an
4 internal process, get into the system. Eventually, reports
5 would be generated, leading to resolution at some point.
6 This information would go to the public. You would then pro-
7 vide us with your comments, and then the feedback back into
8 the system.

9 The most difficult aspect there is that little box
10 that says "Process NRC," as far as how do you actually resolve
11 issues and what are we doing about them. John Linehan, the
12 acting branch chief for the repository project branch, will
13 be addressing this in greater detail in a few minutes.

14 So, where do we stand right now? We initiated this
15 effort in '84. We have a prototype of the system on an
16 IBM PC, on a D Base III package, and I can show that to you
17 during the break. I hope that works.

18 We have established a task force to look into these
19 issues. The word "issue" means many things to many people,
20 and we all use it differently. It could be a technical area
21 of concern. It could be an information need. And when you
22 think about the complexity of this process, you sort of
23 realize that we are dealing with thousands of questions that
24 have to be answered. How then do you track all these ques-
25 tion and who has the right to identify them, and who gets

1/45 1 them into the system, and so forth?

2 So, we had to initiate a task force effort within
3 our division to look into this problem. And basically, the
4 approach that we are taking is to find a certain level of
5 detail which is trackable. Think maybe of buckets. These
6 broad areas that are amenable for tracking, and yet if any
7 question is raised in the future, it would fit into these
8 individual buckets.

9 What this level of detail is we haven't come to
10 agreements amongst ourselves, but we are moving in that
11 direction, and something should happen within the next two
12 months or so.

13 Next, please. (Pause.)

14 It is really necessary to put this system in
15 perspective and how it fits within the organization. It
16 should not be looked upon as a bureaucratic or just an admin-
17 istrative function. But it really plays an integral role
18 in strategic planning within the Division of Waste Manage-
19 ment.

20 If you can imagine this information pyramid, at
21 the very apex you have the Nuclear Waste Policy Act. Under
22 that, you then have the Code of Federal Regulations and all
23 health and safety regs, including the EPA. Then we have
24 what is known as program planning guidance. The commissioners
25 provide us with these broad objectives, goals that we have to

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1 meet with respect to public health and safety.

2 We then have to take these broad goals and trans-
3 late them down into more workable goals, as we get towards
4 the lower staff people, middle management. So, from that,
5 we go into our five-year strategic plan, which looks at the
6 Commission directive and basically says, for the next five
7 years, these will be the programs we will be pursuing.

8 At about this stage, we then get into this issue
9 identification process. What are the important questions
10 that have to be answered before licensing? How can we prior-
11 itize? Who will be responsible for doing the work? What
12 guidance are we to give to the Department of Energy, as they
13 get ready for the SCP (ph.) process?

14 Once we have identified these issues, we can then
15 move into our individual work plans or work breakdown struc-
16 ture, which gets down to the level of telling an individual,
17 "This is your specific assignment." And the assignment
18 could be having meetings with DOE, preparation of generic
19 technical positions, and the like.

20 Ultimately, we move toward resolution, and John
21 will be talking about that in more detail.

22 I will try to now begin to go from this general
23 concept into something substantive, so that you can have a
24 better understanding of what it looks like.

25 As soon as you begin to want to track something,

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1 you then have to basically establish criteria, because if you
2 are going to be tracking something, there has got to be a
3 status, milestones, and some responsibilities, priorities,
4 the work plans that I was talking about. And these are the
5 criteria that we set for ourselves.

6 We have developed a preliminary set of these open
7 items, or issues, if you will, in the areas of waste pack-
8 age and seismology. These are now going through our staff
9 review. And these are the individual fields that we think
10 are appropriate for tracking.

11 I would like to take this a step further and show
12 you a sample report from the system. (Pause.) This is
13 still in a draft stage. This was prepared by some of our
14 waste package specialists. The very first item is this
15 open item issue.

16 As you read that, you may draw the conclusion that
17 either it is too detailed or it is too broad. That is
18 basically the kind of arguments that we are having amongst
19 ourselves in trying to reach an appropriate level for track-
20 ing.

21 The next field is one -- when this initial issue
22 was identified. We do anticipate that some of these issues
23 will be identified from people sitting out here, in fact, as
24 you write in letters in response to environmental assess-
25 ment or ^{our} generic technical positions. We will then have to

1/48 1 take this through our internal process and make sure that
2 your concern is addressed, gets into the system, and to
3 some type of a disposition file.

4 If it is a unique issue that has never been raised
5 before, then it will get into the system as a new issue.
6 Otherwise, it will be addressed in a disposition file.

7 The next paragraph is the background statement.
8 Not everyone is familiar with waste package. I am not famili-
9 iar with that myself. So, since this will be a publicly
10 documented report, it is really critical to have someone
11 who has the intimate understanding of what the significance
12 of this is, as with respect to health and safety, convey
13 that in good language and easy language to that person who
14 doesn't have that understanding.

15 So, the reason for this background statement is
16 to basically let you know why is this important with
17 respect to health and safety.

18 The next item are the key words. The key words
19 have different significance here. They will be used to
20 retrieve this information at a later stage, once the system
21 has quite a few issues in it. But the key words also pro-
22 vide a linkage to other issues. It is very difficult to
23 take one specific area of waste package and really look at
24 it as one unique entity. It always refers to some other
25 issues. They cut across many disciplines.

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1 So, the key words provide a linkage among the
2 various disciplines, in addition to being able to search
3 with them, to retrieve them at a later date.

4 The next field is the status. What is NRC doing
5 about this? What is going on between the NRC and DOE to
6 try and get this particular issue resolved? What are some
7 of the new developments? It is estimated that that field
8 would be updated on a periodic basis, maybe on a monthly
9 basis, as new information arrives.

10 The next item is milestones. Maybe not necessar-
11 ily written the way it is shown there, but this is the activ-
12 ity of what is happening next, where are we going from here.
13 The intent here also is to use this kind of a form in prepara-
14 tion for meetings with DOE and the states and tribes. We
15 really have to begin to focus our attention on resolution of
16 issues, rather than speaking at a very broad level. So,
17 this provides that kind of focus to help us crystallize our
18 ideas.

19 And we have a list of references. If you tap a
20 system into references in waste package, you will be innun-
21 dated with hundreds of references, not all of them necessar-
22 ily relevant to resolving the issue. The references we have
23 here were felt by the individual staff members to be partic-
24 ularly pertinent, to indicate that progress is being made,
25 maybe slowly but surely, towards the resolution of the issue.

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1 And the remaining information has to do with who
2 the scientific person is, the project officer, which particu-
3 lar section of the 10 CFR this issue relates to, and so
4 forth.

5 Now, this is just an individual report, a snapshot,
6 if you will, at a particular point in time. If you look at
7 this report two years from now, you will have a chronology
8 of events, things that have taken place over the last two
9 years toward resolution. So, all of the information remains
10 in the system, all the status statements, the references,
11 the background information, including the individual respon-
12 sible. We have a turnover rate in our organization and in
13 many organizations; one individual may not be around and some-
14 body else will take over his or her place. So, we have a
15 complete record of who was involved and so forth.

16 Unlike the information management system that I
17 described earlier, this is more project management and control
18 to really help us focus our attention. Now, theoretically,
19 and really practically, there will be a linkage between this
20 system and a licensing support system, at least the interim
21 version that is being developed by the NRC, in that you would
22 be able to get access to the references listed below under
23 full text system.

24 Next slide. (Pause.) At this stage, we are
25 continuing the process of identifying these issues, reaching

d/51 1 agreements within our staff. We have a diverse group of
2 scientists and technical people. Not everyone thinks the
3 same say, so we are trying to build consensus and move toward
4 a system that will really meet the needs of our division
5 and then provide that to the public for your comment, as
6 well.

7 In the very near future, then, we hope to go
8 into full scale implementation. Right now we have just
9 focused on Nevada issues for waste package and seismology.
10 If we can get through that, we can then continue with the
11 rest of the disciplines and move on to the other sites.

12 Are there any questions?

13 MR. STEVENS: Based upon the work that some of us
14 were involved in a couple years ago, a couple questions come
15 to mind. One is the thing that you talked a little bit
16 about, and that is what the threshold is for the identifica-
17 tion of an issue and what kind of criteria or standard that
18 you could use for that.

19 And the other one is just simply monitoring what is
20 going on and how do you get some change in that issue into
21 the system. Is that just a discovery by accident or if you
22 hear about some statement at a meeting or some relevant
23 meeting of which there were notes that impacted on a partic-
24 ular issue? What kind of thing have you done in those areas?

25 MR. BENDER: The way these issues are being

1/52 1 identified now is just part of this proactive process by our
2 staff. And these issues are being identified through a
3 review of environmental assessments. For example, the site
4 characterization analysis for the BWIP (ph.) project of
5 several years ago was a source of many issues.

6 Our interaction with DOE, the meetings that we
7 have -- as a result of the meetings, there are always follow-
8 up items. And sometimes during the course of those meetings
9 new questions come up that have never been raised before.
10 So, we anticipate that a primary source for these issues,
11 technical questions, also policy questions, will be from
12 reviewing DOE documents. But we can't always just sit back
13 and wait for DOE documents. We have to get into this pro-
14 active mode, and that requires going into the literature our-
15 selves and basically reviewing that to identify areas that
16 have yet to be addressed by DOE, and then provide that
17 information on a timely basis, so it is usefully and meaning-
18 ful to DOE, as they get ready to do their site characteriza-
19 tion plans.

20 These reports are then made available. They provide
21 for our staff kind of a focus of attention as to where to
22 go next. And as a result of the meetings, as a result of
23 generic technical positions that are written, as a result
24 of the comments that come back, we then begin to really
25 focus on these issues. And periodically, as new information

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1 comes in, then the status is changed and new milestones are
2 put into place.

3 By having the individual's name, for example, on
4 the report, you begin to shine the light on a specific
5 individual and his or her responsibility. That individual
6 is responsible for monitoring the status of a particular
7 issue. And that individual is responsible for always follow-
8 ing up. It is not something that gets written in a report
9 that is put aside and forgotten about; it continues to get
10 into the system.

11 Yes?

12 MR. PHIL ALTOMARE: Issue tracking is a process
13 that we do want to follow, and we are working with internal
14 procedures, as well, that we will have written up and will
15 be available for other people to look at as we put this
16 issue tracking system -- I shouldn't say that -- open item
17 management system in place. And these will be approved and
18 agreed to by the staff.

19 But essentially, we are making sure that no open
20 item or issue gets lost. There is to be a disposition file,
21 also. It is conceivable that some issues will be resolved,
22 but when they drop out, they will go into a list that says,
23 this is what happened to that issue, and it will always be
24 available. There will be issues coming in from the outside
25 that we will consider, and those will also be identified as

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1 having been considered and go into a disposition list.

2 MR. STEVENS: Thank you. Another perhaps more
3 general question, and that is the reference basis upon which
4 you are developing the system. That is two prong. One is
5 identification of issues and the other is issue resolution.
6 Do you intend to take on an advocacy role in terms of resolv-
7 ing issues of dispute between DOE and a particular state or
8 an Indian tribe?

9 MR. BENDER: If you don't mind, I would like to
10 leave the answer to that to John Linehan, which is really
11 the subject of his presentation, as how exactly we are going
12 to be focusing attention on issue resolution and the differ-
13 ent mechanisms for doing that.

14 Any other questions? (No response.) Thank you.

15 MS. RUSSELL: Could we digress for just a minute
16 before the next demonstration? I would like to introduce
17 you to Paul Prestholt. Paul. For the three different
18 geologic mediums that we are looking at for the first reposi-
19 tory program, salt for salt (ph.), as well as tuff (ph.),
20 we have an on-site licensing representative from the NRC
21 to kind of keep track of what is going on at the various
22 sites and to work with the Department of Energy. Paul is
23 our on-site licensing representative for the Nevada project,
24 and he is going to talk with you just for a minute about
25 his role as the on-site licensing rep.

1 d/55 2 MR. PAUL PRESTHOLT: The on-site licensing repre--
3 sentative program started in late fall of 1983, when Mr.
4 F. R. Cook was assigned to the BWIP project, in Richland(ph.),
5 Washington. In January of '84, Dr. Tillich Verma reported
6 to the SRPO, the salt project office, in Columbus, Ohio, and
I reported in here.

7 The primary purpose of the position is to be a
8 liaison between the director of the Division of Waste Manage-
9 ment, Nuclear Regulatory Commission, and the DOE project
10 office. I work -- and the three of us work directly for the
11 division director. We are independent of any single branch;
12 however, we work in very, very close cooperation with the
13 various branches.

14 The work that takes place is to the greatest extent
15 technical. Our major mission is one of technical interaction
16 with the DOE office. The interactions with the states has
17 been retained with the project control branch, Mr. Bunting's
18 branch. However, as I understand, with the increased atten-
19 tion of the states to the program and the possibility of
20 work being one, technical work being done at the various
21 sites, our role with the states may be expanded.

22 At the present time, I have not traveled to any
23 meeting outside of the city of Las Vegas to meet with the
24 state; however, I have attended a number of meetings here
25 in Las Vegas for the PC branch and reported to them as to

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1 what happened at those meetings.

2 As far as the technical interaction is concerned,
3 another very important part of our assignment is to identify
4 and bring to the attention of the DOE at an early time poten-
5 tial problems and issues that we may identify as we look at
6 their program and interact with the various people associated
7 with their program. At the same time, of course, we do make
8 these issues and problems known to our own technical staff
9 in Washington, so that the resolution : the continuance of
10 interaction with th e issues is between technical staffs.

11 We are in no way in a position to make deals with
12 the DOE. We do not make policy. We do at times interpret
13 policy to the best of our ability, recognizing that in some
14 cases it is kind of filtered by the time it comes through us,
15 and the response can be filtered going back in the other way.
16 But the primary idea of the position is to make those inter-
17 actions smoother and to make the work between the two organ-
18 izations more meaningful.

19 We have been instrumental at times in initiating
20 meetings between NRC and DOE. We have something called an
21 Appendix 7, to a site specific agreement between DOE and
22 NRC. And in Appendix 7 it has been identified that indiv-
23 iduals assigned to the OR office have the same privileges
24 as the OR. Therefore, when staff members from Washington
25 come to Las Vegas, they can interact in an informal way

1/57 1 with particular people at DOE, in a very specific manner.
2 These are not necessarily very broad things. Usually, the
3 interactions are focused on a particular problem or a par-
4 ticular area of the investigation.

5 We have had a number of those. They have been
6 quite successful. Normally, we invite -- if there is any-
7 thing very extensive in the discussions, it has been my
8 policy to invite the state to attend, with, of course, con-
9 currence from Washington, and that has never been refused.
10 I can't think of a time when I have been told I may not
11 invite the state. And Mr. Johnson, I know, has been to a
12 number of those meetings, both here in Las Vegas and at the
13 various national labs that work for the NNWSI.

14 I would be glad to answer any questions. I believe
15 that as the second repository states are identified for
16 site characterization, there will be a similar position
17 assigned to them. I don't think that is set in concrete at
18 the moment. I don't think the job is that formally deter-
19 mined. It has been successful to the present time. I think
20 it is recognized as being successful by both the DOE and
21 NRC. So, I don't anticipate that the position will be
22 changed in any great way.

23 Does anyone have any questions concerning what we
24 do and what we are supposed to do? (No response.)

25 MS. RUSSELL: We are going to take a break for the

d/58 1 third demonstration. During the break, Nancy will be passing
2 out sheets; it is a one-sheet piece of paper, and we would
3 appreciate it if you could take the time to fill it out. It
4 is basically an evaluation and critique of this kind of a
5 meeting, and we would be very interested in getting some
6 feedback from you on that.

7 So, Avi is available over there for the next
8 demonstration.

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1 MS. RUSSELL: Next we are going to have John
2 Linehan. John was not here this morning. John is the
3 acting chief of our Repository Projects Branch and
4 basically coordinates all of the NRC activities with the
5 Department of Energy on the technical part of the
6 program. So John is going to come here now and talk with
7 you about activities with DOE and what is coming up in
8 the future.

9 Also, for the people who are here from the first
10 round, as you all probably remember, at least I have
11 heard it numerous times, we had a meeting scheduled with
12 the Department of Energy to discuss the level of detail
13 in the site characterization plan. And that had
14 originally been scheduled for April 24 and 25. The DOE
15 asked to change that meeting. And I understand that it
16 has now been firmly establish for May 7 and 8.

17 And we also wanted to make the point that we are
18 offering the same opportunity for state and tribal reps
19 to come in and talk with us a little bit about comments
20 prior to the meeting with DOE on the 7th.

21 We also are inviting DOE to sit in on that pre
22 meeting, so anyone who is interested in doing that, I
23 would appreciate it if you could let us know.

24 With that, here is John.

25 MR. LINEHAN: Just to follow up on that proposed

1 meeting on the 6th of May, the reason we would like to
2 sit down with the various states and tribes is to get a
3 better feeling for what your positions are on the level
4 of detail that is needed in the site characterization
5 plan before we go into the more formal meeting on the
6 next day with the Department of Energy. You will have an
7 opportunity to review the pre meeting material. The
8 Department of Energy has already sent it out. I don't
9 know if you have received it yet. But it was sent out, I
10 believe, Charlie, a week ago? Approximately then.

11 What we are very interested in, in this pre
12 meeting and in the actual meeting itself with the
13 Department of Energy, is to have active and, let's say,
14 effective participation by the states and tribes. We
15 would like to hear your views. If you look at the agenda
16 for the meeting with the Department of Energy, we have
17 carved out a significant block of time for comments, for
18 dialogue with states and tribes and any other interested
19 parties.

20 As I go into my discussion this afternoon, one
21 of the most important things to this process of
22 identifying issues early on and working towards closure
23 of these licensing issues or open items related to these
24 issues is that it is an open process, and that we do get
25 effective participation by all parties involved in the

1 program. For us to be able to identify issues early we
2 have to know what the various issues are in the various
3 parties' minds for us to lay out plans as to how these
4 issues can be resolved, how to better focus the program
5 on resolution of these issues. We, again, need people to
6 come forward early on in the process and lay out exactly
7 what their concerns are.

8 Will you go to the first slide, please.

9 Unfortunately, I wasn't here this morning when Joe
10 Bunting discussed the five-year plan. What I am going to
11 be discussing, though, is the goals and objectives in the
12 five-year plan that specifically relate to the early
13 identification and resolution of licensing issues. You
14 are going to have to pardon me. You may have had some
15 discussions with Joe Bunting this morning. You may have
16 had some questions that I am not going to be aware of. I
17 just encourage you to ask the same questions of me, even
18 though they may have been raised this morning.

19 The five-year plan is the basic operating plan
20 that we are going to be following from now until 1991,
21 which is the date when DOE is currently scheduled to file
22 their license application. Within that plan there is a
23 number of goals and objectives. What I have laid out on
24 this slide is the major goals and objectives in the plan.

25 The first three here deal with licensing

1 guidance, developing guidance for DOE, issue
2 identification and resolution of issues. And finally,
3 what is going to be necessary for the NRC to develop an
4 independent technical capability to review DOE's
5 application within the three-to-four-year period time
6 frame called for in the Waste Policy Act. What I am
7 going to be talking about is the first three goals laid
8 out here. The fourth has been pretty well covered by the
9 other speakers today, or will be covered later on.

10 The first two goals here focus on development of
11 an aggressive program to guarantee that adequate
12 sufficient guidance is provided to the Department of
13 Energy early on, so that they can develop a complete and
14 high quality license application. In order to be able to
15 determine what guidance is necessary, there is going to
16 have to be interaction with all parties involved in the
17 program so that we can jointly lay out what the important
18 licensing issues are or the open items are that need to
19 be resolved for this process to move ahead. Once we have
20 identified what the issues are, we will go through a
21 process that I will go into in more detail in a few
22 minutes, develop what guidance is needed, what is
23 appropriate at different phases of the program prior to
24 the development of the site characterization plan and
25 during site characterization, and finally what is

1 necessary prior to DOE being able to file a license
2 application with us.

3 Once we have identified the types of guidance
4 that are necessary, what we hope to do is lay out what is
5 necessary to resolve the various issues that have been
6 identified in this process that I will be going into in
7 just a minute. What we hope to do is to focus the
8 program on resolution of these issues, rather than have
9 our interactions with the Department of Energy continue
10 in the way they have in the past where we are mainly
11 responding to DOE's particular position at any point in
12 time.

13 What we would like to set in motion is a process
14 where there is continual progress toward resolution of
15 issues, where once everyone agrees on what the issues are
16 we can lay out a basic process as to what needs to be
17 done to resolve particular issues, some of them being
18 generic issues, some of them being site-specific issues.

19 The third goal I have down here ties in with the
20 top two, because it is going to be necessary for us as we
21 identify the issues to determine what/^{independent} review capability
22 we are going to need at the NRC to review the way DOE is
23 addressing these various issues. We are going to have to
24 determine what review capability is needed for the review
25 of the site characterization plan when we develop our

1 site characterization analysis. We are going to have to
2 determine what type of capability is necessary as data is
3 gathered through the site characterization program, and
4 finally what is going to be necessary for us to conduct
5 an independent review at the time of the license
6 application. The focus here is for us to develop the
7 technical competency and ability to review what DOE is
8 submitting to us.

9 As I mentioned, these are the three major goals
10 in the five-year plan for identifying and resolving
11 issues. As they are laid out here they are goals. What
12 I would like to focus on in the rest of my discussion is
13 how we plan on trying to implement these goals. Before I
14 go into that, if I could have the next slide, I would
15 just like to go over quickly some of the key elements of
16 this five-year plan. I think it is very important that
17 everyone understands these so they can appreciate the
18 context in which I am going to be talking.

19 What we are looking at is a proactive as opposed
20 to a reactive program. What we would like to do is to
21 change from a position where we have been focusing on
22 review of DOE documents. As DOE develops a document we
23 develop comments in response to them. We do indeed need
24 to recognize the importance of some of the program
25 documents, the site characterization plan in particular.

1 But what we want to get away from is being tied down to
2 the various changes that occur in the DOE schedules all
3 the time.

4 It seems like we are constantly putting off
5 things because of schedule changes. And I am not
6 criticizing DOE for that. It is a fact of life in the
7 program with the number of comments that we are getting
8 on the various documents they are putting out. It is
9 very difficult to schedule things and lay out things and
10 meet a lot of those schedules.

11 What we are proposing is an independent
12 activity, independent of those schedules, so that we can
13 keep the program moving. We want to focus the program on
14 the key licensing decisions that must be made by the NRC
15 with respect to Part 60 of our regulations. What we are
16 after here is, again I am going to keep repeating, it is
17 early identification of what the issues are, what the
18 open items are related to the various performance
19 objectives in Part 60, considering the site information
20 we have at the present time, developing site-specific
21 issues under each one of these performance objectives for
22 Part 60, again, focusing any interactions we have with
23 the different site projects on trying to resolve these
24 issues.

25 The ultimate goal here is to reduce the number

1 of issues that have to be litigated during the licensing
2 hearing, and also to better focus the issues that will be
3 litigated during that hearing. Now this whole approach
4 is very dependent on us having a very open and documented
5 process, so that all parties involved are made aware of
6 information as it is generated, they are involved in the
7 identification of issues, and there is involvement in
8 development of the action plans necessary to resolve
9 these issues.

10 In order to make sure that we achieve these
11 goals, and that all parties understand exactly how we are
12 going to go about doing this, what we are proposing is
13 coming up with a mechanism to assure that we do focus the
14 program on issue resolution. Now if I could have the
15 next slide.

16 If you remember the four goals that I had up
17 earlier, the first two of those goals deal with providing
18 sufficient licensing guidance to the Department of Energy
19 and sufficient interaction with the involved parties in
20 this early identification of issues. What we feel is
21 needed to achieve this is to develop a systematic
22 approach on how we are going to go about developing this
23 guidance and focusing the program.

24 The first step we see in the approach -- and I
25 will point out this is our current thinking on how we

plan on going about implementing these goals, and we are
2 looking for feedback from you folks as to the approach we
3 are considering -- the first step, though, is the
4 identification and prioritization of issues. Then once
5 we get those laid out, again, come up with very specific
6 mechanisms to make sure that we focus on resolving those
7 issues.

The next slide lays out the key steps that we
are proposing in identifying and prioritizing these
issues. In the pre-meeting material that you received
there was a memo there on implementation of the five-year
plan which pretty well lays out our current planning
activities now. What we are doing is going through Part
60 and trying to identify the key licensing findings that
must be made by the NRC. Then we are laying out in total
work plans what needs to be done, what activities are
necessary to make sure that these issues are resolved.

What we are looking at is generic compliance demonstration issues from the performance objectives in Part 60. We are laying out the compliance demonstration issues, then laying out what are the open items related to each one of these issues.

23 We are also going through a process -- those of
24 you that are familiar with the NRC and the way we operate
25 is we have a project team that is dedicated to each one

1 of the media. These project teams are going through a
2 process right now of identifying in the various technical
3 areas what we consider the key site issues, the key open
4 items at each one of the sites. And they, in turn, are
5 also developing work plans to lay out what needs to be
6 done to resolve these issues by 1991. And again, 1991
7 being the date for submission of the license application
8 at the present time.

9 In this process that we are going through, what
10 we are considering, I mentioned we are going back to Part
11 60, but we are also considering all of the comments that
12 have been generated to date. When we have issued an STP
13 or a site technical position or generic technical
14 position we receive comments from the Department of
15 Energy and from other interested parties, states and
16 tribes. As we lay out these issues we are considering
17 all of those comments. In addition we are considering
18 comments that were made by the various parties on the
19 early BWIP site characterization report and the draft
20 environmental assessments that were published by DOE.

21 Once we go through this process internally and
22 have pulled a package together, what we are going to be
23 doing is consulting further with DOE on what the issues
24 are involving the states and tribes in these
25 consultations. What we would like to do is reach some

1 agreement on what are the key issues that are facing the
2 program. We will be addressing not only what are the key
3 issues, but what are the outstanding open items related
4 to each one of these issues.

5 Our intent here is to get things pretty well
6 laid out so it is clear in everyone's mind what
7 activities are necessary to resolve the particular
8 issue. Once we have gone through that, we recognize that
9 we cannot address each one of these issues, each one of
10 the open items in the same level of detail. And there is
11 going to have to be some prioritization. We can only
12 have so many interactions with the states and tribes,
13 with DOE, on issues over the next five-year period. What
14 we want to do is maximize the effectiveness; focus in on
15 the key issues.

16 A lot of the issues we are developing to date
17 are what I would consider umbrella issues where there is
18 a number of various issues that fall under them. Looking
19 at these key issues, umbrella issues, we are going to
20 look at what the importance is to the program, try to
21 identify those that are most contentious, those that are
22 critical to early phases of the program, and in
23 consultation with DOE determine where they feel guidance
24 is most needed, what areas they want guidance in.

25 One of our main responsibilities during this pre

1 licensing consultation period is to provide adequate
2 guidance to the Department of Energy. Again, through
3 this whole process, we want to make it an open process.
4 And we are looking for input from all of the parties
5 involved.

6 One of the things we recognize is that in going
7 back to Part 60, trying to identify issues, going back to
8 comments that have been raised to date on various
9 documents, we won't necessarily pick up every issue.
10 When we wrote Part 60, we don't believe it is a magic
11 regulation where the words pick up every issue that needs
12 to be considered. From the perspective of the various
13 parties involved in the program we need some feedback
14 from you folks as to what you think is important. Again,
15 I can't over emphasize that this approach will only work
16 if you do raise these things early on so that we can
17 consider them in this process that we are going into. It
18 is not going to help any of us if people don't bring
19 their concerns to the front so that they can be
20 considered as we lay out plans for addressing the various
21 issues.

22 One of the important things we are going to have
23 to do as we go through this prioritization process that I
24 want to make sure is clear is that we have to worry about
25 how things are going to fit into the overall program

1 schedule. I have talked about this approach being
2 proactive and reactive where we don't want to be in a
3 position where we are responding to reports that are
4 issued by the Department of Energy. But we better remain
5 keenly aware of overall program needs and program
6 schedules. An example would be there are certain issues
7 that need to be -- I won't say resolved, but addressed in
8 detail prior to DOE coming in with a site character-
9 ization plan.

10 We have to recognize that as we prioritize these
11 things such as test plans for hydrologic site
12 characterization need to be addressed early on in the
13 program so that we have given DOE appropriate guidance as
14 to what we think is necessary in the SCP so that they can
15 present an adequate test plan.

16 Once we go through a process of reaching some
17 general agreement on what the issues are, prioritizing
18 them to determine how they should be handled, what we are
19 proposing -- if you will go to the next slide please --
20 is the need for a mechanism to focus the program on
21 resolving these issues. Again, what I am talking about
22 is our current thinking. We are still in the planning
23 process here.

24 The first thing we feel we need to do is to
25 agree on consultation points, when and how we are going

1 to be addressing these various issues. In the past, in
2 comments that the Commission has sent to the Department
3 of Energy on the project decision schedule, we have
4 emphasized the need for DOE to lay out their milestones
5 and schedules. This is important so that we know when we
6 should be providing guidance to them. We need to know
7 when they are going to be developing a particular site
8 characterization plan so that we can get input to them
9 during the early development of that plan. And it is
10 even going to be more important under this new proaction
11 approach that we are talking about.

12 We need to know DOE schedules. We need to
13 consider them. They are very important in laying out
14 this process, so that we can provide timely guidance to
15 them. Again, those of you that are familiar with the
16 BWIP site and the site technical position on hydrologic
17 characterization that has been developed at that site
18 recognize that that is something that was developed years
19 ago. And it has been guiding development of their site
20 characterization in the hydrology area over the past
21 several years. It is a key document. It is early
22 guidance to DOE. And what we are looking for in all of
23 the critical program areas is developing some type of
24 similar document that lays out a basic strategy to be
25 followed in developing technical plans for each one of

1 the sites in the various technical areas.

2 The consultation points that we are going to
3 agreeing on are generally going to be meetings, technical
4 meetings, workshops, between the NRC and DOE with
5 participation by the states and tribes. What we want to
6 strive for is developing agendas for these meetings that
7 focus on approaches for resolving issues. I think most
8 of the meetings that we have had in the past have been
9 very good. They have been very meaningful. But there
10 haven't been well-focused technical discussions in many
11 cases. They have been DOE presenting data, what their
12 current thinking is on a particular technical program.
13 And there has very often been a lack of good technical
14 discussion on what the real issues are. And what we
15 would like to do is turn that around somewhat.

16 In order to do this, again, I bring up the part
17 about effective state and tribal participation. If we
18 focus the agendas better, if we get out the pre meeting
19 materials in a timely manner, we don't see any reason why
20 we cannot have better participation by the states and
21 tribes. I have been at number of meetings over the past
22 couple of years related to the various sites. And it is
23 having enough interaction and participation of
24 very disappointing not / a number of state and tribal
25 representatives there. In some meetings we do get some
good feedback. But in the majority of the meetings I

1 have been in there is very little feedback from states
2 and tribes. And that is something we need. We cannot
3 overemphasize it. We are going to keep progressing
4 forward with the program, and we don't want your concerns
5 coming out later on after we have had meetings with the
6 Department of Energy, agreed on approaches, agreed on the
7 ways to resolve the various issues. Anything we can do
8 to make this process more meaningful, make it easier for
9 you folks to participate, we would like to know. And
10 any feedback you would like to give me on that, give
11 Cathy Russell, we would appreciate.

12 The final thing we see coming out of these
13 meetings is we would like to come up with a set of
14 meeting minutes that don't contain just very basic
15 conclusions and action items. What we would like them to
16 do is reflect progress towards resolving issues. What
17 are the basic agreements? What are the basic
18 disagreements that exist? And have the action items
19 identified those activities that are necessary to achieve
20 resolution? What we would be looking at is documentation
21 that would essentially lay out for the record where we
22 stand. And when I say "we," DOE, NRC, other interested
23 parties, where we stand on issues and what needs to be
24 done to proceed with resolution of these various issues.

25 On the next slide, once we have gone through

1 this process of scoping out the issues and determined in
2 meetings what needs to be done to work on resolution of
3 these issues, we see using the mechanism of generic
4 technical positions, site-specific technical positions to
5 establish and document concensus on agreements that have
6 been reached at meetings with the Department of Energy.
7 And this isn't just agreements, this is also
8 disagreements.

9 For those of you that are familiar with the
10 STP's, the GTP's we have issued to date, we are not
11 talking about sticking to the rigid format that we have
12 used in the past. We realize these need to be flexible,
13 depending on what the purpose of them is, the scope will
14 change. And they are going to vary considerably,
15 depending on the purpose that they are going to have in
16 this issue resolution process. What we would like to do
17 in these technical positions is to lay out what the basic
18 position is of the NRC in a particular issue and
19 ventilate that position.

20 Going to peer review groups, this would be the
21 technical community, this would be our advisory committee
22 on reactor safety, going out for public comment possibly
23 in the Federal Register, and finally trying to identify
24 target groups, groups with expertise on any particular
25 issue. What we are going to try is to get the maximum

1 ventilation of any issues so that we can get all of the
2 comments that are out there, all of the opposing views,
3 so that we can get those to surface.

4 In the past, very often if we issued a technical
5 position in draft form it would state what our basic
6 position was. And that was pretty much it. What we are
7 considering in technical positions that we are going to
8 be issuing in the future is not only to lay out what our
9 basic technical position is, but also to request comment
10 on some of the most contentious areas of that position.

11 In some cases we may find that there is significant
12 disagreement on what the position should be. What we are
13 going to be doing is actively soliciting comments from
14 folks on these various issues, rather than just issue a
15 technical position that is fairly cut and dried, is to
16 lay out what some of the problem areas are, to try to get
17 feedback and to try to get comments.

18 Once we go through this process to draft a
19 position, we would be looking, as we have in the past, to
20 finalize these various positions in final technical
21 positions. And what we would try for in these final
22 technical positions is to get agreement from the
23 Department of Energy on the position that we were taking,
24 get agreement from the involved states and tribes. Now,
25 these positions will be developed in consultation, in

1 coordination with DOE, with the states and tribes.

2 We realize we are not going to be able to
3 resolve all of the concerns. I don't want to lay this
4 out as something over optimistic, pie-in-the-sky. But
5 what we want to do at least is to lay out where we stand
6 on the various issues, where we need to go from here.

7 Hopefully on a number of them we can reach an agreement.
8 But for those where we cannot, at least we can get to the
9 point we can say we have agreement on certain aspects of
10 the issues and scope out the areas where future work is
11 needed.

12 There is different types of technical positions
13 that we will be considering here. Two examples that I
14 have got down are strategies and methodologies. The
15 technical position that exists on hydrologic testing
16 at the BWIP site is an example of a technical position on
17 a testing strategy. It lays out a basic strategy for
18 hydrologic site characterization. It lays down some very
19 crisp basic ground rules that will be followed by the
20 Department of Energy in developing the hydrologic site
21 characterization plan for that particular site.

22 Those of you that were involved in the December
23 meeting we had with the Department of Energy on
24 hydrologic site characterization at BWIP are familiar
25 that the result of that meeting was DOE taking a position

1 that the proposed testing program that they discussed in
2 the meeting wasn't consistent with the site technical
3 position. And it was agreement to go back to what was in
4 the site technical position and redevelop the hydrologic
5 testing program.

6 What the technical position did, it provided us
7 a baseline to go back to. At one point in time we had
8 agreements on what needed to be done at the site. And
9 rather than having the meeting develop into just a
10 disagreement on what needed to be done, we were able to
11 fall back on the key elements of that position, agree
12 that either they were still good, or if they needed to be
13 changed, there had to be adequate justification
14 provided. But what it did was it didn't make us go back
15 to square one and start discussing the basic aspects of
16 hydrologic testing at that site all over again.

17 So a lot of these positions we are talking
18 about, they are going to progress as the program
19 progresses. Right now, or in the near future, they may
20 be basic strategies. As data is collected at the site,
21 some of these positions will be refined, as we work
22 towards resolution of the various issues that they
23 address.

24 The other type of technical position that I have
25 got listed here deals with methodology. One of the

1 things that is critical to the program right now is
2 laying out exactly what is going to be necessary to show
3 compliance with the EPA standard, what is an acceptable
4 methodology for implementation of that standard. We are
5 in the process right now of considering development of a
6 draft technical position to address this issue. We are
7 not sure if it is something that should be pursued in the
8 form of a technical position or if it is something that
9 should be taken to rulemaking. But our goal here is to
10 get agreement, to get some resolution on what is going to
11 be necessary to show compliance with that standard.

12 And I keep saying "we." This is something we
13 are going to have to be doing with the Department of
14 Energy. As we go into this proactive approach, we want
15 to be very careful, because it is a thin line we walk
16 here. We don't want to be overly prescriptive and tell
17 the Department of Energy what they should be doing. We
18 want to lay out the issues. We want to make sure the
19 program is focused on what is necessary to proceed with
20 resolution of those issues. Any GTP that the NRC comes
21 up with is really going to deal with an acceptable
22 approach. It is an alternative that can be considered in
23 broad and general terms in many cases. It is going to be
24 up to DOE to come up with the specifics. Hopefully, as
25 we go through this process, a number of the issues that

1 will be identified DOE will be working, not on technical
2 positions, but on internal documents that will be
3 addressing resolutions of these various issues.

4 So what we are talking about is a joint process
5 here. It is not going to be the NRC developing a
6 technical position on each and every issue that is out
7 there. In some cases DOE will have the lead. But where
8 they have the lead we would expect to have the same type
9 of consultation with them, meetings on these documents as
10 they were developing them, and meetings that would focus
11 on the key elements of these documents, rather than just
12 reviewing a draft document once it was developed, having
13 consultations, having meetings with DOE as they are
14 planning these documents, as they are laying out their
15 basic strategy to be followed in development of test
16 plans. The idea here is for early interaction, early
17 involvement, before plans are fixed, before final
18 decisions are made.

19 Let's go to the next slide. The final step we
20 will be looking at in closing out issues prior to a
21 hearing is rulemaking.

22 MR. DAVENPORT: Excuse me for interrupting your
23 flow there, but I wanted to ask a question about the
24 subject you have just been talking about, finalizing an
25 issue early on about what, for instance, is necessary to

1 show that the EPA standard has been met. Though it is
2 obviously valuable to resolve issues early on, here you
3 have the ultimate question for licensing -- has the EPA
4 standard been met? And I would suggest that this is not
5 an appropriate issue to resolve early on.

6 MR. LINEHAN: Pardon me if I said that. That is
7 not what I meant. It is^{to} determine what is going to be
8 necessary to determine if it has been met, what types of
9 analysis are going to be necessary, recognizing those are
10 going to change as we get data, but laying out basically
11 what needs to be done to show compliance with the
12 standard, laying out a general approach that can be
13 followed.

14 MR. DAVENPORT: Then your reference to
15 rulemaking is only with reference to the analysis that
16 might be applied as opposed to the standard that --

17 MR. LINEHAN: It would only be the methodology
18 to be followed here.

19 MR. DAVENPORT: Yes, because I think it is
20 important to acknowledge that we have a quasi judicial
21 activity going on in licensing. We have a board
22 exercising its discretion and its judgment as to whether
23 the standard has been met. And we certainly need to
24 leave open, until licensing, the ability of the states to
25 put on their cases on these substantive questions. And

1 to the extent that early conversation between the NRC and
2 the DOE puts the DOE in the position of thinking that it
3 has met the substantive standard merely because it has
4 followed the procedures or put in the right amount of
5 information, I think, is to give them a false impression
6 about what may be the outcome of the licensing.

7 MR. LINEHAN: I think you have got a very good
8 point. When we lay out these various methodologies it is
9 going to be laying out at the present time what we feel
10 needs to be done. As site data is gathered this could
11 change significantly.

12 MR. DAVENPORT: One of the essential things you
13 have to remember is that each one of these applications
14 is going to be in a different media. And that means the
15 method by which you would show implementation of the EPA
16 standard or compliance with the NRC's statutory
17 obligation of protecting the public health and safety is
18 going to be different. So a rulemaking is either going
19 to have to invent three or more independent methods of
20 analyzing, or it is going to have to remain silent and
21 wait until licensing actually happens and allow the
22 parties in the licensing to put on both sides of that
23 case and resolve it at that point.

24 I am not speaking against early resolution of
25 issues. But I think that you have to be careful to

1 remember that there are some issues which are better to
2 be left unresolved until you actually get in licensing
3 and let the adjudicative system that we know of resolve
4 that issue when we get there.

5 MR. LINEHAN: As I indicated, this is our early
6 thinking. And what we are going to try to do is come up
7 with criteria to determine what topics are best to take
8 to rulemaking. Those that we are thinking of right now
9 indeed are generic types of topics. They are not the
10 sites specific. They rely too much on what is going to
11 be developed in the future.

12 As far as the implementation of the EPA
13 standard, it is a basic methodology we are looking at,
14 what basically has to be done. There is going to be a
15 lot of variations on that, depending on site-specific
16 things. And that is recognized. It is not to close out
17 forever the question of whether a site meets the standard
18 or not. That isn't the intent. It is just to try to
19 reach at a point with the generic methodology that we can
20 reach agreement that this is generally what needs to be
21 done. But there is a lot down the road that needs to be
22 done before DOE can prove a site meets the standard, and
23 before we either concur or not concur on that when we do
24 our independent review, when we get the license
25 application.

1 I think, if you look further down on this slide
2 here, where I have got possible topics for rulemaking,
3 the other one I have got listed there is the disturbed
4 zone. What we are looking at right here is there has
5 been quite a few questions that have come up regarding
6 clarification of the disturbed zone, of the definition of
7 the disturbed zone in various interactions we have had
8 with DOE, and in comments we have received from outside
9 parties or that DOE has received from outside parties.

10 Again, we wouldn't be considering defining
11 disturbed zone at any one particular site, just further
12 clarification on what is already in the existing
13 regulation. That is all we are looking at right now,
14 just to try to take a couple of steps forward at this
15 point in time. This is something we are just looking at
16 right now. What we have got to do is we have go to weigh
17 the time it is going to take to be involved in any
18 rulemaking on any of these various issues and look at
19 what the benefit is to the overall program. The overall
20 goal we have here is to try to resolve these things as
21 best we can, to focus them as best we can prior to going
22 into the actual license review in the license hearing.

23 As we go through this process, the actual number
24 of issues that we do take to rulemaking may be very few.
25 We are going to have to look at what the impacts are on

1 the program to enter a rulemaking, their significant
2 resource impacts. But going through this process of
3 trying to focus the meetings, trying to focus technical
4 positions on resolution of issues, all of that will lead
5 to formal resolution of how we are going to handle these
6 issues.

7 I am not saying that once we get to a technical
8 position that there is not going to be quite a bit of
9 contention at the time of the licensing hearing. But at
10 least reach some agreement on various issues at various
11 levels, at the staff level, at the level of various
12 management in the different organizations, the different
13 parties involved.

14 I am not sure whether I have answered your
15 question on the rulemaking. I don't want to gloss over
16 the point you made.

17 MR. DAVENPORT: I don't think you have glossed
18 over it. But the next question becomes how much
19 rulemaking do you need if the issues are either
20 site-specific or issues on which parties really need
21 essential day in court. Can you further resolve this in
22 identifying rulemaking?

23 MS. RUSSELL: Jim, could you either say that
24 into the mike --

25 MR. DAVENPORT: -- or not say it at all?

1 MS. RUSSELL: He can't hear what you are
2 saying. We have no mike over there. Would you just
3 generally restate it before he answers it.

4 MR. DAVENPORT: They have heard it, that is the
5 important thing.

6 MS. RUSSELL: But the transcript needs to show
7 what it says, what the question is and what the response
8 is.

9 MR. BUNTING: I guess your question is some
10 things you feel are not appropriate for rulemaking
11 because it needs to go through the adjudicatory process
12 of the hearing.

13 MR. DAVENPORT: Correct.

14 MR. BUNTING: As I mentioned this morning, John
15 is looking at a way to come up with a process of coming
16 up with a technical consensus where he would be confident
17 in presenting his defense for a particular position
18 somewhere in some form before the license application
19 time clock starts.

20 We have mentioned there are two possible ways in
21 which that could be done. One would be in rulemaking.
22 Another one could be an early convening of the hearing
23 board, which would be limited to just that particular
24 question. And you would have your opportunity for your
25 day in court at that time. The question is we have made

1 no decisions at this time about what would be appropriate
2 to take to this final formal closure. We do have some
3 candidate things. The ones we are thinking about are the
4 performance measures that are in 10 CFR 60, but we
5 haven't decided whether we can get there or not, nor
6 which would be the appropriate way to do it. And that is
7 where we would be looking for input from you of what
8 would be the most appropriate way on some of these things
9 to go.

10 But the notion is you are going to have to get
11 there sooner or later. And if we can't reach agreement
12 on methodology or how you are going to prove a point,
13 then I don't know how you can have confidence when the
14 site characterization program is complete that you have
15 got the data in hand to prove anything. And that is
16 where we are trying to come out at.

17 MR. DAVENPORT: A very good point. We are both
18 headed toward the ultimate question of how do you inform
19 the licensing board with the adequate amount of
20 information so they can either give a red light or a
21 green light?

22 The point that I am trying to get to is avoiding
23 the situation where the Department of Energy is in the
24 position of thinking that all they to do is meet the
25 procedures of the rules and there is an automatic green

1 light, and that we have to know that the ultimate
2 decisions of law in fact in this proceeding are going to
3 be by the licensing board, and that there is a red-light
4 green-light at that point, and that some of these issues
5 cannot be resolved, even knowing how you prove that the
6 standard is met, may not get to be resolved until the
7 final proceeding, wherein you put two methods of proving
8 the facts before those adjudicators, and they say, "We
9 like the state's method of proving it better than we like
10 the department's method of proving it." And therefore,
11 had you come up with a rulemaking in advance and said
12 "The way you prove this is by this system," foreclosing
13 that and essentially giving a green light always to the
14 Department of Energy.

15 So I am not condemning the rulemaking process
16 across the board. I am saying that we have to make sure
17 that some of these ultimate issues, particularly as they
18 relate to the ultimate standard of giving that license,
19 are left to the adjudicator of the proceeding.

20 MR. BUNTING: Yes. I hope we didn't convey the
21 opposite impression. Because we always had envisioned
22 that even if the states and the tribes could agree on the
23 proper way to do that, there may always be different
24 interpretations of what that data that comes back from
25 that specific site and those specific tests really mean.

1 And that would be the thing on which the board would
2 focus.

3 There is also the distinct possibility, as you
4 mentioned, that after we have either gone through a
5 hearing early on or a rulemaking early on, and people go
6 out and they really begin to get this data, fill out that
7 process, we may discover things and be smarter and find
8 there is a better way to prove it. All we have is a
9 tougher burden to convince the Board, then, that this is
10 a better approach.

11 MS. KANY: Judy Kany of Maine. I guess I was
12 just thinking, as you were speaking about that, that
13 perhaps a more appropriate role for you people would be
14 to require, let's say in rulemaking or whatever, that
15 there be independent assessments -- let's say the
16 National Academy of Sciences or whatever, and that that
17 could be your role. As opposed to arriving at an
18 appropriate methodology, perhaps it would be more
19 appropriate for you to arrive at what independent
20 assessments are necessary or lets say what the states'
21 role could be, what they could do during site character-
22 ization, for instance. I wonder if you would respond to
23 that.

24 MR. BUNTING: I don't disagree with you at all.
25 The trust of what we are trying to do is to make sure

1 that when these considerable sums of money are spent
2 doing the site characterization program and their rate-
3 payer funds, that they do produce meaningful data, that
4 they do fit into a well-thought-out plan for how you are
5 going to prove a finding. We would like not to have all
6 of this money spent, and then begin to argue about have
7 we collected the right kind of data at all. We would
8 like to have that discussion, to the extent we can,
9 before that money is spent. That is what we are trying
10 to get at.

11 And we would certainly be interested in
12 anybody's views at that time. What we are looking for is
13 a process to bring those view forward, so there can be an
14 open exchange of that before the hearing, not during the
15 hearing after the data has been collected by some process
16 that no one really agreed to.

17 And it is important here, again, to recognize
18 that in the Commission there is the staff and there is
19 the Commission and there is the board. The mere fact
20 that our technical staff agrees with DOE's technical
21 staff and agrees with the state just has no bearing at
22 all on the licensing board, unless you go through some of
23 these formal processes that we are talking about. And it
24 could very well be misleading if there is an agreement
25 between NRC technical staff and the DOE technical staff

1 on a particular process.

2 What we are trying to do is once we feel
3 comfortable that we know what we are doing, to take that
4 beyond and get an endorsement from the Commission and the
5 public and legitimize that process for the hearing.

6 MR. CAMERON: I just wanted to add that in terms
7 of any contractor work that we do or any of the positions
8 that we develop, we do subject that to peer review,
9 including review by the advisory committee on reactor
10 safeguards. And we feel that is very important. But we
11 do, as the Commission, have the responsibility to make
12 those health and safety determinations. And ultimately
13 that is what we have to do.

14 MR. PROVOST: I am Don Provost, State of
15 Washington. I would like to make a comment, one, on the
16 participation of states and tribes, and then ask my
17 question about resolving one of these issues about data.

18 We recognize that our participation has been
19 spotty. But, again, with limited staffs and a
20 proliferation of meetings, you just can't cover them. We
21 have had this recently, especially meetings that are
22 going on at the same time. In our case, next week is an
23 example. Again, we have a meeting on environmental
24 coordination and also on the detail of the SCP in
25 Washington, D.C. at exactly the same time. And I am the

1 look at the comments we provided to the Department of
2 Energy on the headquarters QA plan where we address the
3 issues you have addressed about where QA reports in the
4 organization, the number of people, staffing, and things
5 of this nature, that there is an ongoing interaction
6 where these have been identified as issues. I agree they
7 were identified several years back. But I don't think
8 there was any progress for a number of years.

9 MR. PROVOST: I attended a meeting in San Diego,
10 and I attended a meeting last week, and if I were to
11 paraphrase DOE, "If you understood what we are doing, you
12 would buy our position." They are still going down the
13 same road that they always have. They haven't changed
14 one bit. The issue hasn't been addressed.

15 MR. LINEHAN: I am not saying it is near being
16 resolved. I think if you look at some of the things that
17 have gone on recently, the stop-work order at the USGS
18 pertaining to the Nevada project, if you look at some of
19 the audit reports that are coming out of the various
20 sites, what I see is there is a much more aggressive
21 stance being taken by DOE to identify what these problems
22 are, and to lay out for the record that they need to be
23 handled by the different contractors. Again, I think
24 there is a ways to go there.

25 MR. PROVOST: What about the philosophical

1 differences between NRC and USDOE on the organization at
2 headquarters?

3 MR. LINEHAN: I am not that familiar with what
4 they are. As I understand it, I don't think there is a
5 major philosophical difference. I mean, I can't answer
6 you.

7 MR. PROVOST: Do you mean levels of management,
8 where there are key waves of management, and the type of
9 matrix management that DOE has in headquarters? That has
10 been an issue for a long time.

11 MR. BUNTING: We can echo everything you have
12 said in terms of problems that you have identified. All
13 I can tell you is that they are a matter of discussion
14 between the two headquarters. I know John Davis and all
15 of his talks have again emphasized the importance of
16 getting this resolved. He has said over and over again
17 to Mr. Rushe(ph) and the DOE that not only must the
18 program be run correctly, but it must have the pedigree
19 of all the data. And we are going to be very, very
20 concerned if that pedigree and the system to make that
21 pedigree is not in place before the data has actually
22 begun to be taken.

23 My understanding is that DOE has asked that we
24 look at their QA program and give them comments, and
25 pretty much either agree or disagree with what they are

1 proposing to do, before they actually begin to undertake
2 site characterization. Now what DOE is going to do
3 between now and then to get it in place, I can't tell you.
4

5 MR. PROVOST: On federal sites especially, site
6 characterization is under way. This is an ongoing thing
7 that just clouds more data and more data as it goes on.
8

9 MR. BUNTING: I understand, and we are very
10 sympathetic. I can't, I don't think, give you a very
11 satisfactory answer that would make you feel warm and
12 comfortable, except to say that before the formal site
13 characterization program begins, they will be hearing
14 from NRC on what we think of their program.

15 MR. TOUSLEY: Dean Tousley, Yakima Nation.
16 John, do you mean on that viewgraph that you consider
17 issues which are most contentious to be appropriate for
18 rulemaking? That seems almost backwards to me,
19 legislative solutions to really contentious issues are
20 less likely to satisfy the aggrieved parties.

21 MR. LINEHAN: What we are looking at is issues
22 where there is quite a bit of differing opinion, issues
23 that need to be resolved for the program to proceed.
24 Issues may be more related to different methodologies to
25 be followed, not the final answers to is DOE showing
compliance with Part 60 in a particular area.

As we lay out the approach for what is going to

1 be needed to make any of these findings, what DOE is
2 going to have to do, what NRC is going to have to be in a
3 position to determine is that DOE meets the regulation or
4 not. Very often before DOE can collect data, before they
5 can go into various phases of the program, there has got
6 to be some agreement early on as to what is necessary,
7 what methodology needs to be followed.

8 If there is a lot of disagreement on that, we
9 don't want to be in a position where DOE goes off,
10 generates a lot of data, without having some firm
11 baseline on what is necessary. We don't want them going
12 out there and just doing work and work and work and never
13 being able to satisfy all of these different opinions
14 that exist. And it is to try to resolve some of those
15 early on.

16 I think the think on the implementation of the
17 EPA standard is probably the best example we have that
18 trying to lay out a basic methodology for what is going
19 to be necessary to show compliance with that standard,
20 rather than having DOE go out and generate tremendous
21 amounts of data at a tremendous expense and then finding
22 out that no one is satisfied, that you need a different
23 type of data. You need a different approach. It is to
24 focus in on the basic methodology that needs to be used.
25

1 to show compliance with the standards.

2 Again, it is not going to answer all of the
3 issues, all of the questions that come up once you start
4 generating this data, once you gather this data. But it
5 is at some point in the program to try to fix things and
6 move ahead.

7 MR. TOUSLEY: So you don't mean necessarily
8 issues that it takes the most work to resolve, when you
9 say "most contentious," just issues that it takes early
10 work to work toward resolution?

11 MR. LINEHAN: Yes, it is a combination.

12 MR. FRISHMAN: Steve Frishman, Texas. I have a
13 few points.

14 First of all, it seems to me that you are very,
15 very close to that line of prescription, and close to the
16 point where I am hearing that you think by the talk that
17 goes on between the NRC staff, the Department of Energy
18 staff, states and tribes as they are involved, that it is
19 all right to have prescription if it is consensus
20 prescription. That seems to be what I am hearing.

21 That that is right back to the issue that Jim
22 Davenport raised. And that is that whether everybody
23 agrees or not on the front end does not mean that it goes
24 into licensing as agreed. And it seems to me that what
25 you are trying to do is foreclose issues as early as

1 possible -- rather than resolve, foreclose. And I am
2 very concerning about that.

3 I will tell you why I am most concerned about
4 it, aside from the fact that I think that it does some
5 violence to what little faith we may have and hopefully
6 generate more in whatever licensing process is finally
7 going to be followed in this situation.

8 Now, throughout your presentation -- I realize
9 you haven't quite finished, but I am going to jump ahead,
10 because I see on the next page we are just about there,
11 anyway. Throughout your presentation, it seems to me
12 that you are defying existing reality. And that is that
13 I have just finished looking fairly carefully at such
14 things as the headquarters SCP management plan. Project
15 office is working on SCP management plans. I don't see a
16 connection between your last 45-minutes of talk and what
17 I read in those documents. I don't even see a connection
18 between the intent that you have and the intent that is
19 shown in those documents. Now, where is this all going
20 to come together?

21 And let me give you the down-to-earth
22 situation. On the salt site, wherever it may be, the
23 Department of Energy is going to be out there drilling
24 holes, collecting data before there is an SCP. The SCP,
25 as it is presented to me right now by Columbus, is the

1 rationale document for about four to five layers of
2 various plans, various named plans. They are coming up
3 with acronyms that you wouldn't even believe. But there
4 are four or five layers of them. Those are going to be
5 implemented before any of us know what a full SCP looks
6 like. And the SCP is not going to be the document.

7 The SCP is going to be one of a number of
8 documents, and it does not stand independently. It is
9 dependent upon everything else that is generated beneath
10 it. And a good part of that is going to be off and
11 running. The only reason that the shaft is not going to
12 start is by law they can't start it until they hold an
13 SCP hearing. They would do that too, if they could.

14 So it seems to me that you are hanging all of
15 your approach to how we all going to do this together on
16 a non existent practical application as we see printed by
17 DOE right now.

18 MR. LINEHAN: I appreciate what you are saying,
19 Steve, about the current status of the program and where
20 we stand. I think if you look at the comments we have
21 been making to DOE over the past couple of years, about
22 the need for DOE when I talk about laying out their
23 milestones and schedules, let us know what all these
24 various plans are that fall below the SCP, what they are
25 going to be doing at the various sites, getting with us,

1 consulting with us as they develop those plans, not
2 waiting for everything to be formalized in the SCP.

3 If you look at the PDS comments, the message we
4 sent back there was that unless DOE gets to us early on
5 as they develop these plans, we are not going to be in a
6 position to give them early feedback. We are not going
7 to be in a position when the SCP comes in to do a review
8 within the five to six-month period that we are calling
9 for right now. We need to start working with them from
10 day one as they go through these various layers, develop
11 their strategies for different types of testing.

12 I think this is consistent with the proactive
13 approach we are trying to lay out. It is going to
14 require a modification to the program that way we
15 interact with DOE. Some of the sites are telling me that.
16 they would like to have us review different draft
17 versions of SCP chapters. I am not concerned about what
18 is in a particular chapter in the SCP. I am concerned
19 with what underlies it, what is behind the strategy, what
20 is behind the testing program laid out in that chapter.

21 MR. FRISHMAN: That is exactly my concern. And
22 if I can translate my question down to just a real simple
23 one, how do you plan to deal with an inverted pyramid of
24 implementation through rationale? Because that is
25 exactly what exists right now, and that is what the plan

1 is -- an inverted pyramid. The rationale will come
2 after the test.

3 MR. LINEHAN: I think we have already started
4 dealing with it. I know a lot of you are not familiar
5 with the meeting I referred to that occurred at the BWIP
6 site in December on hydrologic testing. But one of the
7 basic conclusions that came out of that meeting was that
8 DOE was proposing to go ahead with some hydrologic
9 testing. I believe it was in January or February of this
10 year. And the results of the meeting were that, number
11 one, they weren't consistent with the site technical
12 position that had been agreed on by the DOE and NRC.

13 But number two, more important, there wasn't a
14 rationale for the proposed testing that they were going
15 to enter into. And I think we have started recognizing
16 the importance for focusing these meetings on looking at
17 what the rationale is behind anything that they are
18 proposing to do.

19 I think there is a ways to go here. It is
20 something we are just starting. I think we are changing
21 the types of meetings we have with the Department.

22 MR. FRISHMAN: Let me just give one more
23 warning. And that is when I asked DOE these questions,
24 they put heavy reliance on Chapter 4 of the EA, saying,
25 "That is the plan for site characterization."

1 Have you finally come to a conclusion that you
2 are going to do a formal review of the final EA? And
3 second, based on what we saw of the draft EA, do you see
4 that as being sufficient rationale to correctly spin this
5 pyramid a hundred and eighty? Do you think that that is
6 good enough?

7 MR. LINEHAN: We are going to be doing a review
8 of the final EA's, yes. As far as Chapter 4 of the final
9 EA's or of the draft EA's as we know it, that is not good
10 enough. There is still a lot of work that has to be
11 done. I think that is the message we have been sending
12 to DOE. And I think the response that we get from DOE is
13 that there is a significant amount that needs to be
14 done. I have never heard DOE pushing Chapter 4.

15 MR. BUNTING: I can't address Chapter 4
16 specifically, but we are doing a review of the EA. And
17 we will be advising the Commission on what we think the
18 Commission should be concerned about, because it is a
19 final document. We have concluded it isn't appropriate
20 to fire off comments necessarily right straight to DOE.
21 But we will give the Commission the option to do that.

22 I don't know, but I think I may have heard you
23 say something. I am a little bit -- I don't know whether
24 to be disturbed or not, but let me try it out. It seems
25 like the alternative to what we have laid out here is to

1 do nothing and let DOE rush out and do whatever they want
2 to do, or whatever the staff and DOE somehow or another
3 agree to do, and not reach any real conclusions on what
4 are the residual issues involved in that approach.

5 What we have laid out here quite clearly is an
6 attempt to try and get some of these issues out of the
7 way before the money is spent. Because there is not an
8 endless pot of money. If you have to go back and do it
9 again it is coming out of the rate-payer's pocket. So we
10 are trying to be sensitive to that.

11 And yes, in a certain way we are trying to get
12 you, the states, we, the NRC, and DOE to say that based
13 on what we know now this is the appropriate way, we
14 think, to prove this issue. And we would like to get
15 some kind of a record as to what everybody thinks at that
16 time. We realize this is a first-of-a-kind undertaking.
17 When the data comes in it may show that approach wasn't
18 worth a tinker's dam. That is a possibility. It may
19 show that there is a much better way, and somebody will
20 have to prove that is a better way. It may be us, it may
21 be DOE, it may be you. But we are trying to get some
22 order to this very confused process and let people have a
23 chance to say what their issues are about any particular
24 approach before the money or the bulk of the money is
25 spent. This isn't a cure-all for everything. It is an

1 approach to try to work it that way.

2 MR. FRISHMAN: I appreciate what you are
3 saying. I don't want to waste money here either. I
4 guess what I am really questioning is, first of all, I am
5 trying to, I guess, by the intensity of the questions
6 here, what I am trying to do is get you as scared as we
7 are.

8 MR. BUNTING: We are.

9 MR. FRISHMAN: And second, maybe there is some
10 value in what you point out as being the only
11 alternative, and that is let DOE fall in a hole. DOE has
12 gotten to where they are by continually insisting that
13 they recognize they are proceeding at risk. And they are
14 still at risk.

15 I am not sure that it is really the
16 responsibility of the NRC to try to mitigate that risk if
17 it is a one-way street. Because I don't see on DOE's
18 side that they have been listening very carefully to the
19 kinds of things you have been saying. And I agree with
20 the kinds of things you have been putting on paper,
21 because we have put many of the same things on paper. In
22 fact, we have adopted formally some of the things you
23 have put on paper.

24 I am not sure that your responsibility goes all
25 the way to putting the rate-payers' money out in front of

1 DOE's incompetence at this point.

2 MR. BUNTING: I think we do have a statutory
3 responsibility to build a record. When we go to hearing,
4 the burden is going to fall on us to either prove why the
5 application is acceptable or not acceptable. And we feel
6 like we need to start developing that record now by
7 laying out our concerns, by laying out your concerns, by
8 giving the guidance to DOE and saying "This is an
9 acceptable way to do this."

10 Once we say that, however, anyone can come in
11 and prove a different approach. The only burden is it
12 will take more time. That is fine. But we feel like we
13 have a responsibility to try to bring some order to this
14 process and not let everything be unresolved and not try
15 to reach any closure until that application falls in the
16 door. Because once it does, the whole burden of this
17 program falls on the Nuclear Regulatory Commission to go
18 or no go.

19 And I think that we have to lay out our concerns
20 way beyond that. We have to be in a position that we can
21 do a good review of the application and decide whether or
22 not the application is complete and responsive. If we
23 don't lay out some criteria before hand, we have no basis
24 to do that. We don't want the clock running on us, if it
25 shouldn't be running on us.

1 MR. CAMERON: I just wanted to clarify one thing
2 so there is no confusion. Although we do have the
3 responsibility to make a licensing decision, the burden
4 of demonstrating compliance with our regulations falls on
5 DOE as the license applicant.

6 MR. DAVENPORT: Well-clarified, counsel. I
7 wanted to ask a question on the subject that you have
8 just been talking about. I am Jim Davenport. The statute
9 provides for site characterization plans to be reviewed
10 by the agency. And your discussion of closing issues
11 here hasn't brought into consideration the possibility of
12 using that instance to, in essence, refuse to give a
13 go-ahead on the site characterization plan because it
14 identifies methods of collecting data or proving basic
15 principles which don't comply with the agency's
16 expectations about how they should be proved.

17 Are you overlooking the site characterization
18 plan review as an opportunity to do the same thing that
19 you are identifying herein possibly by rulemaking? And I
20 know that the statute does not specify that the
21 Commission has the authority to disapprove the site
22 characterization plan, but only to comment on it. I am
23 aware of that.

24 MR. LINEHAN: No, I think what we are laying out
25 this afternoon is an addition to what we will be putting

1 in the site characterization analysis that we prepare.
2 We are not trying to overlook that. But, again, if we
3 have problems with what DOE is proposing, we would like
4 to get them out on the table before we review the SCP.
5 We don't want to go through the time and the effort of
6 knowing that there is going to be a testing strategy laid
7 out in the SCP that we don't feel is appropriate. We
8 want to try to identify that now, identify it early on.

9 But ultimately the site characterization plan,
10 the analysis that we prepare of it, are one of the key
11 elements of the program. Probably in going through this
12 presentation I have under-emphasized the role of the
13 SCP. But again we see that there is going to be a period
14 of time where we can address a number of these issues
15 prior to DOE coming out with the site characterization
16 plan.

17 Everything is geared towards identifying
18 problems early on, so they don't proceed down a path
19 where we are going to be getting a SCP, and we are just
20 going to be saying, "No way, we don't agree with this."
21 It just doesn't benefit anyone. But, again, the SCA will
22 be the formal document that will be used to get that
23 message across finally, if indeed we have problems with
24 the SCP.

25 One other thing we are concerned about, we

1 talked about the time and the money being spent. A lot
2 of this testing, I think it is important to recognize
3 that DOE is just going to have one shot at it. Some of
4 these major testing programs, once they do the testing
5 they are going to perturb the site. There is other
6 activities that are going to be going on at the site,
7 such as sinking of the exploratory shaft that will
8 perturb the natural system. And it is very important, as
9 early as possible, to identify what these problems are.
10 There are cases where it may not be possible for them to
11 go back within any reasonable period of time and repeat
12 some of the testing, if it isn't done properly the first
13 time. And that is another key concern that we all have
14 to be aware of.

15 MR. FRIESEMAN: John, let me ask you one
16 question, and you may not be able to answer it. But what
17 I would like to hear from you and your staff is some kind
18 of a commitment that you are not going to come to
19 resolution on such things as test plans without having
20 the accompanying SCP rationale so that you can do your
21 statutory and regulatory duty of reviewing an SCP. Can
22 we get a commitment like that?

23 MR. LINEHAN: Let me make sure exactly what you
24 asked me. What we are proposing in these meetings
25 between now and the SCP and what we are proposing in

1 these technical positions -- I am not sure if your
2 concern is the fact that the states won't have adequate
3 involvement in this.

4 MR. FRISHMAN: My concern is that you do your
5 full job just like we are not going to be able to do our
6 full job, the way I am reading it right now.

7 MR. LINEHAN: What we will be trying to do is
8 reach agreements. Those agreements are going to have to
9 be substantiated by what they put in the SCP. The SCP is
10 the document that is going to tie it all together.

11 MR. FRISHMAN: The thing that I am getting at is
12 you, yourself, said that you don't want to look at
13 piece-by-piece in the SCP two or three review pieces.
14 Now what I am asking is would you commit in some way to
15 not giving any kind of a nod to a test plan where you do
16 not have accompanying SCP rationale so that you can carry
17 out your regulatory duty?

18 MR. LINEHAN: We are not going to give the nod
19 to anything unless we have that level of rationale. That
20 is going to be necessary for us to -- whether it be in a
21 meeting, whether it be in a technical position, that same
22 level of rationale is going to have to be available for
23 us to give a nod to DOE.

24 MR. FRISHMAN: And I don't want to get into the
25 picking of words, but I will take that as a commitment.

1 We can get much more picky about exactly what you said,
2 but for purposes right now -- no SCP rationale, no
3 testing.

4 MR. LINEHAN: If you look at the meeting minutes
5 on the BWIP hydrology meeting, if you look at the
6 followup correspondence between the NRC and DOE, it hits
7 upon that exact point. In other words, there was a
8 general rationale presented by the Department of Energy.
9 We need to do certain testing. We need certain
10 information.

11 It wasn't the level of rationale as to how it
12 fit into overall characterization of the site. That
13 wasn't presented: It was recognized by us and DOE that
14 that was necessary before we could reach any agreement.
15 And I think that that documentation will give you an
16 indication of where we are going and what we are going to
17 require of the department before we bless something.

18 We went into a meeting where DOE was proposing
19 to start testing in January or February of this year.
20 The result of the meeting was just to shut off that
21 testing. It was jointly agreed by us and DOE. And the
22 whole thing focused on there not being sufficient
23 rationale. They types of rationale we get after were the
24 exact types of things that are going to be required in
25 the SCP, backup for the SCP.

1 MR. FRISHMAN: The only reason that I am seeking
2 a commitment like that is because, I remind you again,
3 the SCP management plans don't seem to indicate that the
4 sequence you see is what DOE has in mind.

5 MR. LINEHAN: One final point. I think this is
6 something that we should discuss further in the meeting
7 we are going to be having with DOE on what is going to be
8 in the SCP. I think we need to get into how all these
9 interactions prior to the SCP also are going to tie in.

10 MR. CAMERON: In relation to the issue that Jim
11 Davenport brought up earlier, I am not sure how relevant
12 this is to that, but in the final procedural amendments
13 to Part 60 that the Commission will be issuing in the
14 future, those rules require the NRC to state any specific
15 objections that we have to DOE's site characterization
16 plan.

17 MR. LINEHAN: I think we have pretty well gone
18 over this slide.

19 The final slide here deals with the third goal
20 that I laid out on the original slide this morning. And
21 it has to do with development of our independent
22 technical review capability. This is a critical part of
23 us developing work plans, laying out what needs to be
24 done to address any issue to provide timely guidance to
25 the department and to do what the NRC needs to do at

1 certain phases of the program.

2 What we are going to be doing for the various
3 issues that we identify is establishing review criteria
4 and the review approach that we are going to be using.
5 We are going to be doing this for each compliance
6 demonstration issue, and as necessary for other generic
7 issues and other site-specific issues. Hopefully in most
8 cases we can come up with a basic generic approach, and
9 then modify it for the various sites that we have to
10 consider.

11 We are going to have to do this for various
12 stages of the program. There is going to be various
13 levels of site data available. The uncertainty is going
14 to change significantly as we get into the program, as we
15 go from the SCP to the SCP updates, and finally to the
16 license application. And what we are going to do is lay
17 out a strategy that we will follow when we review each
18 one of these documents as it comes in.

19 For those of you that are familiar with the
20 modeling strategy document that we issued, I believe it
21 was in mid or late '84, it is a document that basically
22 lays out, it spells out, the level of detail, the type of
23 review we are going to do in each technical area when we
24 review the license application. As we go through this
25 process or identifying issues, looking at what is

1 important to various issues at various phases of the
2 program, we are going to be developing additional
3 modeling strategy documents that will address the review
4 we do at the time of the SCP and the biannual updates on
5 the SCP that we receive from the Department of Energy.
6 These documents will be discussed in meetings as we
7 develop them. They will be available for review and for
8 comment.

9 What we have seen as looking at the modeling
10 strategy that we developed for the license application,
11 the document we put out in 1984, is we feel, again for
12 those of you that are familiar with it, we need much
13 greater level of detail spelling out the types of models
14 we will use, the types of codes we will use, areas where
15 we will do a totally independent review, do our own
16 independent modeling effort, areas where we will rely on
17 verification validation of models that are developed and
18 used by the Department of Energy. This is going to vary
19 for the different technical areas. It is going to be a
20 call we are going to make, based on the complexity of the
21 issues, areas where we don't necessarily agree with the
22 particular code and model that is being used by the
23 Department. And we are going to have to pick and choose
24 on these.

25 We have always said that we are not going to be

1 able to do a one hundred percent review of every
2 calculation the Department does. What we are going to do
3 is we identify issues, try to focus on the most important
4 things that need to be reviewed so we can make an
5 independent determination as to whether the DOE is indeed
6 meeting the regulations when they file the license
7 application with us.

8 One of the additional things we are going to be
9 doing as we develop these review approaches and these new
10 modeling strategies is looking at the contractor work
11 that we have, the technical assistance work, the research
12 work, to try to recalibrate, to decide if we are getting
13 the information that we need through these contracts to
14 put us in a position to do these independent reviews, or
15 if we have to modify some of these contracts.

16 Again, on all of these things, just about
17 everything that we will develop and everything that
18 exists today, the different statement of works for the
19 contracts, documents such as the modeling strategy
20 document, they are all available. And what we are
21 looking for is any input where you could give us some
22 constructive feedback as to what we need to do to help
23 get ourselves in a position where we are ready to review
24 the application when it comes in in 1991.

25 Everything I have talked about today is in the

1 preliminary stages. We are just starting to come up with
2 a methodology for implementing the five-year plan. And
3 we are looking for constructive feedback. It is only
4 going to work as an open process if we get effective
5 interaction with all of the parties involved. And any
6 comments you could give us at the meeting or as a
7 followup to the meeting would be appreciated.

8 Are there any other questions?

9 MS. RUSSELL: We have sort of two distinctly
10 different groups here at the meeting today. We have the
11 people who are involved in the first-round program. And
12 they are in a very different phase of activities. And
13 then we have the state and the tribes here from the
14 second-round program. Rather than making those from the
15 first round kind of listen to what they have heard on
16 numerous occasions, we would like to sort of make a
17 suggestion in terms of a change in the agenda.

18 We would like to, tomorrow morning, if it is
19 satisfactory with everyone, ask a rep from each of the
20 states and tribes that are here to come up to the mike
21 and give us just a real brief overview of where your
22 program is and what you are doing, and what problems you
23 might have.

24 Very often we find at these kinds of meetings
25 that we are always talking about what we are doing, but

1 we don't get a whole lot of feedback from the states and
2 tribes about what they are doing and where they are in
3 the process. So that would be very helpful.

4 And then after that, if possible, we would like
5 to meet with the representatives from the second-round
6 states and Indian tribes that are here and at least kind
7 of give you a general overview of our state and tribal
8 participation program, if that is satisfactory with
9 everyone.

10 In the first critique I got back of the meeting,
11 one of the comments was that additional time needed to be
12 provided for outdoor recreational activities. So in
13 order to try to accommodate that, I think we probably can
14 close up now.

15 I want to once again thank you for coming, and I
16 want to thank you for generously donating your dollars
17 for the coffee. And we will see you tomorrow morning
18 about 9:00.

19 (Whereupon, at 4:06 p.m., the meeting was
20 adjourned.)

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CERTIFICATE OF PROCEEDINGS
3

4 This is to certify that the attached proceedings
5 before the NRC COMMISSION
6

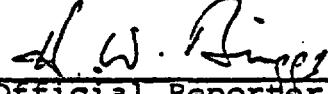
7 In the Matter of: STREAMLINING THE LICENSING
8 PROCESS and DEMONSTRATING
9 THE LICENSING SUPPORT SYSTEM
10

11 Date of Proceeding: April 29, 1986
12

13 Place of Proceeding: Las Vegas, Nevada
14

15 were held as herein appears, and that this is the original
16 transcript for the file of the Commission.
17

18
19 Horace W. Briggs
20 Official Reporter - Typed
21

22 
23 Official Reporter - Signature
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25

Background - on
Preparation of
Mtg Minutes

Document Name:
LAS VEGAS MTG SUMMARIES

Requestor's ID:
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Author's Name:
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Document Comments:
Summaries of presentations at Las Vegas mtg 4/86

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INTRODUCTION

On April 29-30, 1986, NRC held its first, independent meeting concerning NRC activities to implement the Nuclear Waste Policy Act. The purpose of the meeting was to discuss a number of initiatives developed by the NRC to streamline the high-level Waste repository licensing process, as well as to demonstrate NRC's "pilot project" for the licensing support system.

Representatives of both the first and second round of potentially affected States and Indian Tribes, as well as the Department of Energy were invited to attend the meeting. Copies of the agenda, list of attendees and briefing materials are attached.

The meeting took place in Las Vegas, Nevada, since the "pilot project" utilized data from the Nevada Site. It also gave us an opportunity to work with the DOE staff at the NNWSI Project office and get their feedback on the system.

Following are summaries of the various presentations given by NRC staff as well as the States and Indian tribes. A copy of the transcript is also enclosed.

Fm
Attornare

Division of Waste Management Strategic Plan

Mr. Bunting briefly discussed the Division of Waste Management 5-year plan (previously distributed) and noted that there are four goals to be achieved:

- Provide guidance to DOE in the form of regulatory guides and regulations and identify issues
- Develop an independent licensing capability; standard review plan, methods, models and codes
- Work towards the resolution of issues prior to the licensing hearing to the extent possible
- Streamline the licensing process

It was noted that formal issue resolution and streamlining the licensing process relates to the NWPA requirement to reach a licensing

decision within three years with 12 month extension for good cause (the NRC's most optimistic estimate was 42 months). Both of these goals would have to involve the states and Indian Tribes. The NRC will be trying to develop technical consensus on both generic and site specific issues to the extent possible prior to receipt of the license application. It will be necessary to work out a process by which the NRC staff can find out the states and Tribes' particular issues on technical positions and hopefully reach a point of resolution prior to the receipt of the license application. The NRC has not, however, ~~reached~~ come to any conclusion as to what would be a satisfactory method for issue resolution.

Each of the following activities to be
in today's conference
discussed have been put in place to
further the goal of streamlining the
licensing process.

*Paula's
rewrite
including
Cameron's
comments.*

Mr. Bunting and Ms. Russell gave a brief presentation on the NRC efforts to establish a Federally Funded Research and Development Center (FFRDC) to assure long-term continuity in technical expertise in NRC's high-level Waste Management program. After the NWPA was passed, NRC discovered that many of its contractors for the high-level waste program were also working for DOE (the repository licensee) and the States and Indian Tribes (parties in the licensing proceeding). *and that we cannot preclude contractors from severing ties with NRC and working for DOE* In order to avoid conflict of interest, either real or perceived, at the licensing process, NRC had to look at other alternatives for long-term technical support. After reviewing all the options, it was determined that agency establishment of an FFRDC for the HLW Waste Management program was the preferred option. It would assure long-term continuity in technical expertise as well as avoid conflict of interest. The FFRDC would be precluded from performing any work in the Waste Management area for other groups and would commit to work exclusively for NRC for the length of the program. The Commission has supported establishment of the FFRDC, and Notices of intent, *issuance of a Notice of Intent to establish an FFRDC, and Notices of intent as well as the draft solicitation package* were published in the Federal Register and Commerce Business Daily *and was made available for public comment. The comment period closed on 4-25-86, and the Commission vote to approve issuance was* *(latest estimate is end of June)*, *(latest estimate is end of July)*. anticipated having the FFRDC in operation by December 1986, and NRC has begun development of a Phase-In Plan to phase out its other high-level waste technical assistance contracts and transfer the work to the FFRDC.

(latest estimate is February 1987)

Document Name:
FFRDC

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Author's Name:
CRussell/vcd

Document Comments:
FFRDC

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Document Comments:
FFRDC

C. Cameron's
comments

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CONTINUITY

PROBLEM
EARLIER

Mr. Bunting and Ms. Russell gave a brief presentation on the NRC efforts to establish a Federally Funded Research and Development Center (FFRDC) to assure long-term continuity in technical expertise in NRC's high-level Waste Management program. After the NWPA was passed, NRC discovered that many of its contractors for the high-level waste program were also working for DOE (the repository licensee) and the States and Indian Tribes (parties in the licensing proceeding). In order to avoid conflict of interest, either real or perceived, at the licensing process, NRC had to look at other alternatives for long-term technical support. After reviewing all the options, it was determined that agency establishment of an FFRDC for the Waste Management program was the preferred option. It would assure long-term continuity in technical expertise as well as avoid conflict of interest. The FFRDC would be precluded from performing any work in the Waste Management area for other groups and would commit to work exclusively for NRC for the length of the program. The

(Preliminary?)
Commission has supported establishment of the FFRDC and notices of intent as well as the draft solicitation package were published in the Federal Register and Commerce Business Daily for comment. The comment period closed on 4-25-86 and the Commission vote ^{or WHETHER TO PUBLISH} to publish the RFP is expected by June. NRC anticipates having the FFRDC in operation by December 1986, and NRC has begun to phase out its other high-level waste technical assistance contracts and transfer the work to the FFRDC.

Document Name:
SUMMARY/PRESENTATION PHIL/AVI

Requestor's ID:
VINITAD

Author's Name:
PAltomare/vCD

Document Comments:
Summary of Presentation by Phil and Avi

Cathy -

Final version please include
in your package (send copy to Chip)

Summary of Presentation by Phil Altomare and Avi Bender

A) Licensing Support System (LSS) - NRC Pilot Project

The staff provided an overview and detailed description of the pilot project and recent activities of the LSS Interagency Coordinating Committee (ICC). The ICC was formed recently to provide guidance to DOE on development of their LSS. The purpose of the pilot project is to define the nature and scope of a system needed to support NRC's 3-year license review requirements. This includes addressing both procedural and technological aspects of a full text storage and retrieval system. Demonstrations of the documents retrieval system were given during the breaks.

Several questions were raised by State/Tribal representatives concerning the nature of the information in the system, and access to the data. The staff noted that the LSS would provide access to documents and information. As to specific remote site capabilities to "down-load" the information onto diskettes and equipment compatibility, the staff noted that the ICC would be addressing these questions and continued State and Tribal input to the ICC, was desirable.

A concern was raised as to why the States and Tribes were not involved in the process of establishing the (ICC). The staff noted that the ICC was specifically established to provide a mechanism for, and encourage public participation. The intent of the ICC is to involve State, Indian Tribes and public in defining the LSS requirements. With respect to document storage and access a question was raised as to whether the contributors to the data base would have a "no - access file". The staff noted that all contributors should have a no access file for any of their privileged information.

One state representative raised a concern about an interim approach for collecting documents produced by DOE. The staff noted that the next meeting of the ICC will address this problem. Also, in the April 22, 1986 meeting of the ICC, DOE suggested that they would collect full text of documents from the passage of the NWPA.

Future Plans

The major thrust of our short term activities will be to move toward an interim system for document storage and retrieval until a final DOE system is developed at which time the documents will be loaded into the

DOE system. Document handling procedures will be developed through the interagency coordinating group.

Open Item Management System

The staff provided an overview and detailed description of the NRC Open Item Management System. The purpose of the system is to establish a process for the identification, tracking and resolution of HLW open items. A prototype of the system has been developed on a microcomputer based software package for demonstration purposes. The process of identifying open items is ongoing and efforts are underway at the DWM to reach agreement on the level of detail for tracking.

Future Plans

The Open Item Management System will be converted to a mainframe so that it can be linked to the LSS. The initial demonstration of waste package and seismology open items for NNWSI will be expanded to other disciplines and other sites.

New Name

Document Name:
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C. Cameron / C. Russell / 86/05/0

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86/05/07

Time Sent:
11:22

Message:
For Cathy Russell from Chip Cameron

Meeting summary Las Vegas plus issues to be addressed

WL
NRCL } to be constant - the "steps noted"
} should be

LAS VEGAS MEETING SUMMARY - F.X. CAMERON

The Staff presentation addressed the major issues involved in the negotiated rulemaking process. This included the role of the convenor and facilitator for the negotiation, the identification and selection of participants in the negotiation, the role of the agency, how consensus is defined, and the steps in the negotiation process. The experience of other agencies with negotiated rulemaking was also discussed.

Although the workshop participants asked several questions about the negotiated rulemaking proposal, their major concerns focused on the relationship of the Interagency Coordinating Committee(ICC) to the negotiated rule committee, funding for participation in the negotiation, selection of participants, use of the term "negotiation", the authority of the NRC to require the parties to the licensing proceeding to submit data to the LSS, and substantive issues related to the rulemaking, e.g. the entry of privileged data, sanctions for not entering data.

In terms of the ICC, the State/Tribal concern was that the ICC would make decisions on the technical criteria for the LSS and consequently would preempt the negotiating committee from making decisions on important policy issues. In response, the Staff noted that it was necessary to initiate the coordinating committee to ensure a DOE commitment to develop the LSS and to begin the timely evaluation of the design of the LSS. Furthermore, the ICC is primarily concerned with the technical details of design of the LSS, as opposed to the use of the LSS in licensing, which is the concern of the negotiated rulemaking.

Nevertheless, there are important areas of overlap, primarily in the development of protocols on the type of information that will go into the system. On these issues, the ICC will be developing background information for use by the negotiating committee in reaching the final decision on these protocols. The Texas representative proposed that the States and Tribes get together to discuss their role in the ICC process and to attempt to develop a coherent position on LSS issues for input to the ICC. The Staff indicated that this approach could be a useful method for the ICC to obtain State and Tribal comments on the LSS, but emphasized that the NRC is willing and prepared to accept State and Tribal comments on an individual basis.

Another major concern of workshop participants was the issue of funding for State and Tribal participants in the negotiating committee. The Staff offered the opinion that State and Tribal participation in the negotiated rulemaking would seem to be an appropriate use of the funds provided under §116 and 118 of the NWPA.

A third major concern was how the NRC planned to select the participants for the negotiating committee. Several participants advised that the NRC should avoid, if possible, the consolidation of several interests under the representation of one organization, i.e. several States or Tribes being represented by one State or Tribe. It was also noted that some States or Tribes may not participate because of staff and resource priorities, but would feel that their interests were adequately represented by other participants on the negotiating committee. The Staff stated that it had identified the interests that would be affected by the rulemaking (first round States and Tribes, second round States and Tribes, State and Tribes that would be affected by HLW transportation, public interest groups at a national and site-specific level, industry, and rate commission representatives), but had not yet identified the individual participants. Furthermore, the Staff was mindful of the need to ensure that organizations with significantly different interests were not consolidated under one organization. The Staff also noted the the facilitator for the negotiation would assist in the selection process.

Several participants at the workshop stated that the use of the term "negotiation" carried a negative political perception of giving something away and requested that the NRC attempt to find a new label for this process. The Staff pointed out that negotiated rulemaking enhanced the ability of the States and Tribes to influence the rulemaking process and that the term "negotiated rulemaking" was an accepted label used by the Administrative Conference of the U.S. and by the other agencies that had conducted negotiated rulemakings. However, the Staff stated that it would explore the possibility and practicality of using a different label for the process.

Several questions addressed the authority of the NRC to require States and Tribes to submit data to the LSS. The Staff noted that the NRC has the authority to establish the rules for participation in its licensing proceedings. Furthermore, the development of the LSS should be beneficial to all parties to the proceeding, as well as organizations that are not formal parties, and therefore provides an incentive for States and Tribes to participate in the LSS.

A number of workshop participants asked questions on the substantive issues to be discussed in the negotiated rulemaking, e.g the handling of privileged data, and possible sanctions for failure to enter data into the system. The Staff discussed these issues generally but noted that some of these issues would be addressed in a preliminary manner by the ICC before the beginning of negotiations. In addition, the Federal Register Notice on the Commission's intent to use a negotiated rulemaking would specifically identify the major issues to be addressed in the rulemaking. These issues, as well as other elements of the negotiated rulemaking, would be open for public comment before the convening of the negotiating group. Furthermore, the Staff noted that

the negotiating committee would have the flexibility to revise these issues if necessary to effectively carry out the negotiating process.

In light of the State/ Tribal meeting, the following issues require prompt action by the Staff:

- . the selection of the facilitator
- . identification of the potential participants to the negotiation
- . assurance from DOE that the \$116 and \$118 funds will be available for State and Tribal participation in the negotiating committee
- . a final decision on the issue of funding any participants who are not receiving funds from DOE
- . exploration of alternatives for assuring, to the extent practicable, that data is placed in the LSS before the license application is filed
- . analysis of whether it is advisable to select a new label for the negotiating process

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Requestor's ID:
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Author's Name:
BThomas

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SUMMARY OF LAS VEGAS MEETING

RP. Summary of Las Vegas Meeting.

Presentation Overview

Repository Projects Branch presentation titled "Early Identification and Closure of Licensing Open Items" focused on the major goals and objectives of the five year plan, related to the development of guidance, identification, prioritization, and resolution of open items. It also focused on systematic approaches toward achieving these goals and objectives. This approach was conveyed as an effort toward issue resolution in a proactive manner as opposed to reactive, with the main intent of obtaining technical consensus through a very open process. Also conveyed was that there were no final conclusions on mechanisms for achieving this at the present time.

Open item identification and prioritization, and development of a mechanism to focus development of guidance and NRC/DOE interactions on formal closure of open items were the focus of the proposed systematic approaches discussed. Attention was drawn to consultation with DOE, States, and Tribes, during the identification and prioritization of generic compliance demonstration issues as well as site specific open items. Also, reference was made to some of the proposed criteria being considered for prioritization.

The discussion on mechanisms for formal closure elaborated on the need for better focusing of NRC/DOE interactions and consultations on open item resolution, more widespread ventilation of open items, documentation of consensus with DOE, States, and Tribes through technical positions, and legal resolution through rulemaking. The final discussion related to the NRC's development of technical review capabilities needed to independently conduct quality reviews during different project stages such as the SCP, SCP updates, and licensing. In this case, the modeling strategy document was given as an example.

Major Areas of Concern/Staff Responses

Several favorable comments were vocalized and stated in the meeting questionnaire on the valuable, purposeful and informative aspects of the presentation. However, there were some State/Tribal questions and concerns that need to be considered in further development of our strategy for open item resolution.

Our presentation sited different types of technical positions as mechanisms for formal closure of open items. The types being (1) strategies - development of crisp baseline ground rules such as strategy for hydrologic stress testing and (2) methodologies - implementation of the EPA standard.

Concern: How appropriate is compliance with the EPA standard as an open item to resolve early? and, how appropriate is it to foreclose similar substantive

questions prior to the licensing hearing? It was quite clear that the States and Tribes were concerned that the NRC will make an actual judgement prior to the Licensing Board deciding on such open items and that these types of factual determination should be left for the Licensing Board.

Staff Response - The staff clarified that any development of a technical position on the EPA standard would be related to the generic methodology used to show compliance with the standard rather than using a technical position as a vehicle to make a final determination on compliance for a specific site. The staff also recognized that there maybe open items that are better-off left unresolved until getting to licensing and letting the adjudicative system resolve those open items, and will consider determining the criteria for prioritization of open items for formal resolution. Concerns of this kind is why the NRC is attempting to draw out the input of DOE, States, and Tribes in order to decide where closure comes about.

The proposed criteria for rulemaking on open items was presented as ripe, well ventilated, mature, most contentious, and long-lead time.

Concern: What is the appropriateness for rulemaking to closeout open items where the concerned parties really want the open items to go through the adjudicatory process of the hearing? Also, are legislative solutions to really contentious open items less likely to satisfy the aggrieved parties?

Staff Response - There are no set plans on what would be appropriate to take to final closure at this time, except that we are seeking to develop mechanisms with input from DOE, States and Tribes on what would be an appropriate course to take. One of the prime candidates for final closure discussed was closing out on a methodology to show compliance with the EPA standard. The staff also pointed out that the rulemaking process allows for public comment and input.

General Conclusion/Action Items

In general, there were several questions that need to be considered as we further develop this approach. We believe that these questions will be resolved as the proposed process begins to evolve. For example, once open item identification and prioritization is completed, we will then be able to identify specific courses of action. In order to expedite open item identification and prioritization which also is a major step towards implementing the open item tracking and resolution system, the following actions are recommended by the staff to be taken as early as possible.

- o Establish a complete list of open items.
- o Establish a criteria for types of open items that should be resolved early and open items that will remain open until Licensing.
- o Establish criteria for what methods of resolution is appropriate to which open items.

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CRusse11/vcd

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S/T Presentations

Phil A's
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The second day of the meeting began with an opportunity for each State or Tribal representative to give a brief presentation about their individual high-level Waste programs. Although there were some comments made by the State/Tribal representatives about DOE and its program, most of the discussions adhered to the primary purpose of providing information about the State/Tribal high-level waste programs. Following are some brief excerpts from the State/Tribal presentations.

1st Round

Washington - Don Provist

In addition to the repository program, State also has great problems with defense Waste on the Hanford Reservation, as well as the accumulation of the many hazardous materials from the past 40 years and their affects on the Columbia River and the environment. State working with the Center for Disease Control to study the health impacts of radionuclide releases. State has given a subgrant to Oregon to provide for their participation in the repository program. Washington is also planning to have an on-site representative at Hanford during the site characterization.

Yakima Indian Nation - Dean Tousley

Tribal Staff dealing with HLW program has grown from 3 to 6 persons, as well as a technical coordinator, 3 consulting firms and 2 law firms. Program focuses primarily on technical reviews and issues. Very supportive of DOE Use of "electronic mail". Very helpful in getting information about program on a timely basis.

Confederated Tribes of the Umatilla Reservation - Dan Hester

Tribal Nuclear Waste Advisory Committee trying to determine whether to go back into consultation and cooperation agreement negotiations with DOE. Concerned that DOE refuses to have a recorder present at C & C negotiating sessions.

they are Umatilla Meeting with DOE on 5/5/86 to discuss procedural portion of negotiating sessions. No further negotiations with DOE until DOE agrees to a recorder.

The Tribe has just installed a computer system and have put out their first newsletter. In near future intend to hire a librarian, a technical Director and an on-site representative.

Nez Perce Tribe - Ron Halfmoon

Nez Perce Tribe still does not receive meeting notification and information on a timely basis. Tribe has both possessary and usage rights much broader than just those for the ceded lands. If Hanford is nominated, Tribe intends to develop

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They have requested some 100 documents from Doe.

Washington

They will be seeing electronic mail used throughout the program

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its own technical resources rather than relying on the Council of Energy Resource Tribes (CERT). Very active HLW information program, including newsletter and television films. *They are* preparing to begin C & C process with DOE and have identified 34 issues relating to the process. Will start with a scoping session with DOE. Tribe also plans to establish an on-site coordinator. *The 12 States and Tribes affected by activities at Hanford are working together.* *The big piece have just installed a IBM compatible computer equipment.*

Nevada No representatives present on 2nd day.

Texas - Steve Frishman

Texas *They are* Currently has a staff of 4 for the HLW program. Trying to use in-house technical support rather than outside contractors for state program. Unique situation where the Texas Geological Survey works under contract to the DOE Columbus Project Office. Stressed need for State to have access to information at the same time as NRC and DOE. Supportive of concepts of negotiated rulemaking but expressed some reservations concerning representation of parties. *Texas plans to sue DOE on the site selection.* *They also have*

Utah - Jack Wittman

Utah *Utah has* Utah Nuclear Waste Office works directly for the Governor. Administrative matters are handled by the Governor's staff. Have a staff of 9 for the Waste program with emphasis of program on environmental matters. Have just negotiated a "large" technical assistance contract to help state review the final EA. The State has also developed a full-text storage data base system. The Office is gearing up for site characterization. The State legislature has appropriated money to the Office for use for litigation since DOE grant money can't be used.

Mississippi - Don Christy

The state *the* Program has 4 full-time support staff. Staff also has a nuclear waste advisory committee with members from state and local government as well as citizens. Major State contention with DOE program is that the Mississippi site is only about 2 miles from a community of 1200 people, with one home only about 400 yards from the proposed repository site.

Louisiana Rennie DeVille

Louisiana has *the* Have been involved in HLW repository program since 1977 and work primarily with SALT Project Office in Columbus. LSU has served as one of the prime contractors for the SALT HLW program. State program could be characterized as "passive" resistance since most people think the state has a veto in its back pocket.

2nd RoundStockbridge Muncie Tribe - Kim Vele

DOE's proposed site sits on the Wolf River Batholith located on the Reservation. After much fighting, Tribe finally received a \$30k grant from DOE In Decth 1985 as well as a "truckload of boxes and materials" to provide background material on the program and the Area Recommendation Report (ARR). With few resources, Tribe was only able to prepare about 8 pages of comments to DOE on the ARR.

Penobscot Nation - Priscilla Attean

After more than a year of fighting with DOE, Tribe finally received a \$30k grant in Jan. 1986. HLW repository program is a very difficult program to understand. Tribe is unsure as to who to talk to and what to talk about - they have much to learn. Tribe has requested additional money from DOE to try and participate in a meaningful way. Unclear as to why DOE selected a site on land that was just returned to the Tribe in 1980.

Minnesota - Bill Clausen

Mr Clausen expressed
Major concern about the lack of time given by DOE to review the ARR.

White Earth Tribe - Dwight Wilcox

they Tribe was told to put in a grant proposal to DOE 2 days before it was due. Tried to get assistance from BIA and no resources for the HLW program. Tribe feels that they cannot participate meaningfully as long as current DOE policies regarding Indian Tribes are in affect. Since site is only a candidate site, BIA said they would not review petitions for affected status.

Wisconsin - David Woodbury

the Current State relationship with DOE is "very shaky" and State will insist on a C & C agreement being in place before allowing DOE to do any testing at the site. As to State has had a petition concerning transportation with the NRC for action for over 2 years and wondered when they could expect a reply.

Maine - Judy Kany

the State fully supports position of Indian Tribes in the States. DOE has not provided adequate time or resources for State to do a complete review of the ARR. Also concern that NRC repository licensing process does not adequately protect public health and safety.

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From WAFOM! - DOE
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VINITAD

Author's Name:
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Document Comments:
S/T Presentations

The second day of the meeting began with an opportunity for each State or Tribal representative to give a brief presentation about their individual high-level Waste programs. Although there were some comments made by the State/Tribal representatives about DOE and its program, most of the discussions adhered to the primary purpose of providing information about the State/Tribal high-level waste programs. Following are some brief excerpts from the State/Tribal presentations.

1st Round

Washington - Don Provist

In addition to the repository program, State also has great problems with defense Waste on the Hanford Reservation, as well as the accumulation of the many hazardous materials from the past 40 years and their affects on the Columbia River and the environment. State working with the Center for Disease Control to study the health impacts of radionuclide releases. State has given a subgrant to Oregon to provide for their participation in the repository program.

Yakima Indian Nation - Dean Tousley

Tribal Staff dealing with HLW program has grown form 3 to 6 persons, as well as a technical coordinator, 3 consulting firms and 2 law firms. Program focuses primarily on technical reviews and issues. Very supportive of DOE Use of "electronic mail". Very helpful in getting information about program on a timely basis.

Confederated Tribes of the Umatilla Reservation - Dan Hester

Tribal Nuclear Waste Advisory Committee trying to determine whether to go back into consultation and cooperation agreement negotiations with DOE. Concern that DOE refuses to have a recorder present at C & C negotiating sessions. Meeting with DOE on 5/5/86 to discuss procedural portion of negotiating sessions. No further negotiations with DOE until DOE agrees to a recorder. Tribe has just installed a computer system and have put out their first newsletter. In near future intend to hire a librarian, a technical Director and an on-site representative.

Nez Perce Tribe - Ron Halfmoon

Tribe still does not receive meeting notification and information on a timely basis. Tribe has both possessary and usage rights much broader than just those for the ceded lands. If Hanford is nominated, Tribe intends to develop

its own technical resources rather than relying on the Council of Energy Resource Tribes (CERT). Very active HLW information program, including newsletter and television films. Preparing to begin C & C process with DOE and have identified 34 issues relating to the process. Will start with a scoping session with DOE. Tribe also plans to establish an on-site coordinator States and Tribes affected by activities at Hanford are working together.

Nevada No representatives present on 2nd day.

Texas - Steve Frishman

Currently has a staff of 4 for the HLW program. Trying to use in-house technical support rather than outside contractors for state program. Unique situation where the Texas Geological Survey works under contract to the DOE Columbus Project Office. Stressed need for State to have access to information at the same time as NRC and DOE. Supportive of concepts of negotiated rulemaking.

Utah - Jack Wittman

Utah Nuclear Waste Office works directly for the Governor. Administrative matters are handled by the Governor's staff. Have a staff of 9 for the Waste program with emphasis of program on environmental matters. Have just negotiated a "large" technical assistance contract to help state review the final EA. State has also developed a full-text storage data base system. Office is gearing up for site characterization. State legislature has appropriated money to the Office for use for litigation since DOE grant money can't be used.

Mississippi - Don Christy

Program has 4 full-time support staff. Staff also has a nuclear waste advisory committee with members from state and local government as well as citizens. Major State contention with DOE program is that the Mississippi site is only about 2 miles from a community of 1200 people, with one home only about 400 yards from the proposed repository site.

Louisiana Rennie DeVille

Have been involved in HLW repository program since 1977 and work primarily with SALT Project Office in Columbus. LSU has served as one of the prime contractors for the SALT HLW program. State program could be characterized as "passive resistance since most people think the state has a veto in its back pocket".

2nd RoundStockbridge Muncie Tribe - Kim Vele

DOE's proposed site sits on the Wolf River Batholith located on the Reservation. After much fighting, Tribe finally received a \$30k grant from DOE In Dec. 1985 as well as a "truckload of boxes and materials" to provide background material on the program and the Area Recommendation Report (ARR). With few resources, Tribe was only able to prepare about 8 pages of comments to DOE on the ARR.

Penobscot Nation - Priscilla Attean

After more than a year of fighting with DOE, Tribe finally received a \$30k grant in Jan. 1986. HLW repository program is a very difficult program to understand. Tribe is unsure as to who to talk and what to talk about - much to learn. Tribe has requested additional money from DOE to try and participate in a meaningful way. Unclear as to why DOE selected a site on land that was just returned to the Tribe in 1980.

Minnesota - Bill Clausen

Major concern about the lack of time give by DOE to review the ARR.

White Earth Tribe - Dwight Wilcox

Tribe was told to put in a grant proposal to DOE 2 days before it was due. Tried to get assistance from BIA had no resources for the HLW program. Tribe feels that they cannot participate meaningfully as long as current DOE policies regarding Indian Tribes are in affect. Since site is only a candidate site, BIA said they would not review petitions for affected status.

Wisconsin - David Woodbury

Current State relationship with DOE is "very shaky". State will insist on a C & C agreement being in place before allowing DOE to do any testing at the site. Also, State has had a petition concerning transportation with the NRC for action for over 2 years and wondered when they could expect a reply.

Maine - Judy Kany

State fully supports position of Indian Tribes in the States. DOE has not provided adequate time or resources for State to do a complete review of the ARR. Also concern that NRC repository licensing process does not adequately protect public health and safety.

Document Name:
SUMMARY OF SESSION W/2ND ROUND

Cameron's
Comments

Requestor's ID:
VINITAD

Author's Name:
CRussell/vcd

Document Comments:
Summary of Separate of session w/2nd Round S/Ts.

Just before the conclusion of the meeting on the second day, we (NRC) met separately with the representatives of the second round States and Indian Tribes. Since this was the first time that NRC had contacted people from the second round program, we wanted to give them a general overview of NRC's role in implementing the NWPA, as well as inform them about the opportunities for participation in the program. We also wanted to assure that they were aware of the informational-type services we provide, such as the weekly mailing of the upcoming meetings, the toll-free telephone line and a designated point of contact within the NRC to answer questions and provide information. Most of the participants were unaware of these services and wanted to be added to the mailing list. Also, since there was some confusion about the NRC's role in the HLW program, ^{l.c.} We agreed to send them copies of 10 CFR Part 60 as well as a Commission organization chart. We did emphasize that the Commission did not have grant money or funds available to the States and Tribes for their participation in NRC activities. However, we did point out that we had discussed the matter with representatives from DOE Headquarters and were told that using grant funding to attend the meeting was an acceptable use of their grants. However, it was stressed that the specifics of the DOE grant and its use were between the individual State/Tribe and DOE. There were some questions about the scope of NRC participation in the crystalline program. We said we were currently reviewing our resources and would get back to them. With the exception of three States, NRC currently has no designated point of contact within each second round State or Tribe, so we proposed sending letters to the Governor or Tribal Chairman requesting that such a contact be designated. The States/Tribes were supportive of this approach and urged us to do it as soon as possible.

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"Summary of Evaluation"

chip's comments

Summary of Meeting Evaluations

At the end of the meeting, we requested that attendees fill out a short questionnaire evaluating the meeting. Following are the results:

1. Was this meeting information and/or useful?

There was unanimous agreement by evaluations that the meeting was both informative and useful. "Topics were germane and complete". "Good opportunity to meet and talk with NRC staff". "Given the amount of information received to date by the 2nd round Tribes, it is naturally informative, but NRC should correspond more with 2nd round representatives".

2. Would it be useful to have other such meetings and, if so, how often?

Once again, all evaluators agreed that it would be useful to have other such meetings. However, recommended frequency ranged from quarterly to "on an as needed basis". "Unsure of how often, would depend on activities and priorities of the program". Most evaluators recommended that meetings be held on a quarterly basis so they could keep up to date on our activities. "NRC should also be available for special meetings with States/Tribes as necessary or as significant changes develop in the program".

3. Was subject matter appropriate? What other subjects should be covered in future meetings?

There was unanimous agreement among evaluators that the subject matter was appropriate. "Nice to know What's going on and possibilities for State/Tribal contributions". Recommendations for other subjects to be covered in future meetings include: all applicable NRC regulations; quality assurance; technical issues; criteria for site characterization; socio-political issues and NRC position on these; licensing progress; status of program; NRC position on Tribal treaty rights; and NRC planning schedule for next 12-months for the crystalline repository program. "Subjects are like targets of opportunity - they have to be put on the agenda as they come up".

4. What improvements would you suggest for future meeting?

Several evaluators indicated they did not get notification or receive information package soon enough. "It would help us considerably to be able to receive the material at least 2-3 weeks prior to the meeting so we could review it and participate meaningfully in the meeting". "More and better microphone system for audience participation". "It would be very helpful to get a glossary at the beginning of the meeting with terms/acronyms that are

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5. What questions/concerns do you have as a result of the individual presentations?

Several concerns were raised about the negotiated rulemaking process". The States/Tribes have different agendas so I don't think you could find a single representative that could coordinate both State and Tribal concerns". "Each tribe has different concerns and cannot be bumped together - must have individual tribal representation". "Negotiated rulemaking will "boil down" issues too much before they get to the Commission". Several is negotiated rulemaking just for 1st round? Questions also expressed about access and input of data into the LSS by State/Tribes. "Legally who will use data and who will determine what is proprietary". "Concern that LSS rules will apply only to outside parties, not NRC or DOE". At what point in their development, must data/documents be entered into the LSS? "Other general questions and concerns: "Timetable for licensing appears extremely unrealistic". "NRC is not adequately following the 2nd repository program". "DOE is like a run-away train with a 5-yr. old at the throttle. Hope that NRC through its licensing process will be able not only to stop the train, but also take the 5-yr. old to the woodshed before the train jumps the track".

6. General comments about any aspect of the meeting.

Generally, evaluators felt it was a good meeting with good quality presentations. "Slides need to be larger and presentations could use a little more polish". "Opportunity for State/Tribal presentations on their activities were very useful and enlightening". "I was pleased that the NRC included the second round people in this meeting - they can learn from the 1st round". "The NRC attempt to bring in States/Tribes early on is most appreciated. Perhaps the process NRC is attempting to develop will give DOE pause) and reduce the "arrogance fact". "NRC appears to have a positive attitude about feedback and responding to the needs and questions of States/Tribes". "NRC has the correct attitude toward the program and competent staff to carry it out".

Phil's
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M E E T I N G Q U E S T I O N N A I R E

Completed
Questionnaires

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Yes. Topics were germane and complete

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

each quarter

3. WAS SUBJECT MATTER APPROPRIATE? yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

None but subjects are like targets of opportunity - they have to be put on agenda as they come up.

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

None. maintain good agenda control and pre-preparation of speakers. one question - you asked for a presentation from tribes and states on their current activities without letting them know ahead. Their short talks could have been more productive if

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

Re: Phil Altomar's talk on LSS, the tribes and states have different agendas so I don't think you could find a single representative that could coordinate into the LSS coordinating meetings both state and tribal agendas.

they were aware of the update before coming to the meeting

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

(A) I believe NRC has a positive attitude about feedback and responding to needs and questions of states and tribes so the ^{NRC} attitude is correct and their ability is good too.

(B) The meeting was certainly better run, better thought out and more properly controlled than any DOE meeting I've been to so far.

(Other)

John Hutchins
CERT 4/29/86

The position articulated by the Maine representative on
negotiated rulemaking was not representative of the
thinking of other state and tribal reps that I talked
to. I didn't find anyone who agreed with her.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

YES, very much so

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Every Quarter, or As Appropriate to keep States/Tribes informed & up to date

3. WAS SUBJECT MATTER APPROPRIATE? YES

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

THAT DOE IS LIKE A RUN-AWAY TRAIN being run with a 5 year old AT THE THROAT. I would hope that NRC through its licensing process will be able not only to stop the train but to take the 5 year old to the wood shed before the train jumps the track.

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

The NRC attempt to bring in STATES/TRIBES early on is most appreciated. Perhaps the process NRC is attempting to develop will give the DOE PAUSE and reduce the "Annoyance factor" and improve the level of competence which so far seems to be somewhat deficient. Thanks for the opportunity to participate

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Informative and useful.

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

I think so - perhaps quarterly. Depends if and how tribes become involved in coordinating group meetings.

3. WAS SUBJECT MATTER APPROPRIATE?

Yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

Public participation under NWPA

DOE Project Decision Schedule

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

More than one mike to encourage participation.

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

NRC On-site representative - import to NLC HQ

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

I was pleased with the presence of second round tribes in this meeting.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Yes

2 to 3 times/year

3. WAS SUBJECT MATTER APPROPRIATE?

*yes nice to know what's going on
and possibilities for state/tribe contribution*

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

More formally set aside opportunities for states/tribes to raise concerns and assure that those concerns make it to the top.

5. WHAT QUESTIONS/CONCERN DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

Conflict negotiation will "boil down" and out issues too much before ~~it~~ it gets to commissioners.

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

Any kind of conflict resolution should not consider lumping affected states or tribes into groups. Each tribe/state has many diverse viewpoints, many of them unique to each state/tribe -

M E E T I N G Q U E S T I O N N A I R E

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

very useful

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

quarterly

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

Quality Assurance Update

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

emphasis of NRC/DOE interaction

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

availability of ^{all} info. to all parties,
issue of proprietary info. & sanctions
for withholding info. & documents need

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

to be
state/tribal presentations on resolved.
activities, office development,
etc. were very enlightening

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Yes; Good opportunity to meet w/ NRC STAFF.

2. WOULD IT BE USEFUL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

YES; QUARTERLY —

3. WAS SUBJECT MATTER APPROPRIATE? YES

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

- SITE SPECIFIC ISSUES;
- Socio-POLITICAL ISSUES AND NRC POSITION ON THESE
- REVIEW OF ACTUAL DECISION PROCESS POST SITE CHARACTERIZATION

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

MORE MICROPHONES FOR AUDIENCE PARTICIPATION,
HANDOUT w/ GLOSSARY OF TERMS / ACRONYMS

5. WHAT QUESTIONS/CONCERNs DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

- Q - MANDATORY DATA SUBMISSION WHEN ENTERING RULEMAKING PROCESS
- Q - NEED FOR NEGOTIATED RULEMAKING

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

PRETTY GOOD PRESENTATIONS; SOME COULD USE A LITTLE MORE POLISH;

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL? yes, both.
2. WOULD IT BE USEFUL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN? Yes quarterly or more often if a critical issue arose
3. WAS SUBJECT MATTER APPROPRIATE? yes
WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?
full disclosure on every concerned parties data.
4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?
A more centrally located meeting place. Limited financial resources place constraints on travel.
5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS? need for individual tribal representation NOT a spokesman for all. Each tribe has different concerns and cannot be lumped together.
6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.
Presentations, especially slides, should not be hurried through.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

yes, a minimum meeting such as twice a year, but also special meetings when necessary such as settlement of off reservation treaty rights and effected status

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

use a "shot-gun microphone system for gaedins", better explanation of purpose or goal of meeting ahead of time. Better organization of demonstration.

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

M E E T I N G Q U E S T I O N N A I R E

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Both

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Semi annually minimum

3. WAS SUBJECT MATTER APPROPRIATE? yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

N.R.C. planning schedule for 1yr
relating to C.R.P.

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

invitation to make presentation

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

Having none

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

M E E T I N G Q U E S T I O N N A I R E

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

yes - once or twice a year or as significant changes occur.

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

w/Respect to LSS? or in general?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

M E E T I N G Q U E S T I O N N A I R E

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

↓
yes ↓ yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

bimonthly yes ↗

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

Yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Yes, quarterly or semi-annually.

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

Status updates - Licensing progress - outstanding issues etc

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

Try to limit to one full day with fewer breakd

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

Would like follow-up summary of main points discussed in addition to transcript.

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

yes

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Yes, as often as necessary, dependant on progress in program.

3. WAS SUBJECT MATTER APPROPRIATE?

yes

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

We did not get an information package before the meeting. It would help us considerably to be able to review the material prior to the meeting.

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

I have some questions, but most are the result of this process being in the early stage. Hopefully as this develops, we will be ~~and stay~~ involved when some of these questions are answered

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

informative to the extent that all input is used to analyse the position in the process where a governmental body, organization or agency is at.
Useful - only time will tell beyond the above statement

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

Yes - qualification: if the transcripts are available to those that are involved whether or not they attend. Since DOE has not funded tribes to fully and actively participate, in our estimation, we are involved but have limited staff, money and time to complete necessary tasks.

3. WAS SUBJECT MATTER APPROPRIATE? Yes - because of 1.

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

Reality based interactions of the NLC's position with the NWPA vis a vis the policy and procedure of DOE. If the 1st round is going ahead full steam ahead this meetings discussions are starting a dash when DOE is already at full stride and heat completion. The 2nd round people may benefit but many questions were generated that need review to determine what is needed.

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?
 1. Cost &/or funding to access and participate in this system
LESS / open item tracking
 2. Legally who and what is going to use data and input - policy development documents are sensitive - is this one sided?
 3. Is ruling king for just 1st round? If not manageability and cost for 2nd round to participate.
6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

MEETING QUESTIONNAIRE

HARRY NEWMAN
North Carolina
RADIATION PROTECTION
SECTION.

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL?

YES, BOTH.

2. WOULD IT BE USEFULL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN?

YES, QUARTERLY AT LEAST TO KEEP US OUT OF THE DARK

3. WAS SUBJECT MATTER APPROPRIATE?

YES

WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?

TECHNICAL ISSUES. HOW WILL CHARACTERIZATION BE DONE?

WHAT CRITERIA WILL BE USED?

4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?

FREE COFFEE. GET OUT INFO AT LEAST A MONTH BEFORE THE MEETING.

5. WHAT QUESTIONS/CONCERNs DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS?

HAVE COST/BENEFIT ITEMS BEEN CONSIDERED.

TIMETABLE FOR LICENSING APPEARS EXTREMELY UNREALISTIC.

THE IDEA OF GETTING ONE REPRESENTATIVE FOR ONE ISSUE OR

6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.

SHOULD MEET A GREAT DEAL OF OPPOSITION

MEETING QUESTIONNAIRE

1. WAS THIS MEETING INFORMATIVE AND/OR USEFUL? Given the amount of information received to date, by the 2nd Repository Tribes, it is naturally informative. But it would be advantages to correspond with all 2nd round Tribes more.
2. WOULD IT BE USEFUL TO HAVE OTHER SUCH MEETINGS AND, IF SO, HOW OFTEN? Yes. But how often is not known. This would depend upon evaluation of the information produced at this mtg.
3. WAS SUBJECT MATTER APPROPRIATE? Vague but appropriate
WHAT OTHER SUBJECTS WOULD YOU LIKE TO SEE COVERED IN FUTURE MEETINGS?
*Site Guidelines,
enforcement
were they followed,
and all applicable Regulations.*
4. WHAT IMPROVEMENTS WOULD YOU SUGGEST FOR FUTURE MEETINGS?
5. WHAT QUESTIONS/CONCERNS DO YOU HAVE AS A RESULT OF THE INDIVIDUAL PRESENTATIONS? Is the NRC following the 2nd Repository Project adequately.
6. GENERAL COMMENTS ABOUT ANY ASPECTS OF THE MEETING.
Provide information concerning #5

ORNL

APPENDIX II.

Text of a letter written in 1855 to President Franklin Pierce by Chief Sealth of the Duwamish Tribe of Washington state concerning the proposed purchase of the Tribe's land.

The Great Chief in Washington sends word that he wishes to buy our land. The Great Chief also sends us words of friendship and good will. This is kind of him, since we know he has little need of our friendship in return. But we will consider your offer, for we know if we do not so, the white man may come with guns and take our land. What Chief Sealth says, the Great Chief in Washington can count on as truly as our white brothers can count on the return of the seasons. My words are like the stars--they do not set.

How can you buy or sell the sky--the warmth of the land? The idea is strange to us. Yet we do not own the freshness of the air or the sparkle of the water. How can you buy them from us? We will decide in our time. Every part of this earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people.

We know that the white man does not understand our ways. One portion of the land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother, but his enemy, and when he has conquered it, he moves on. He leaves his fathers' graves, and his children's birthright is forgotten. The sight of your cities pains the eyes of the redman. But perhaps it is because the redman is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the leaves of spring or the rustle of insect's wings. But perhaps because I am a savage and do not understand--the clatter only seems to insult the ears. And what is there to life if a man cannot hear the lovely cry of a whippoorwill or the arguments of the frogs around a pond at night? The Indian prefers the soft sound of the wind darting over the face of the pond, and the smell of the wind itself cleansed by a mid-day rain, or scented with a pinon pine. The air is precious to the redman. For all things share the same breath--the beasts, the trees, the man. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench.

If I decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers. I am a savage and I do not understand any other way. I have seen a thousand rotting buffalos on these plains left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive. What is man without the beasts? If all the beasts were gone, men would die from great loneliness of spirit, for whatever happens to the beast also happens to man. All things are connected. Whatever befalls the earth befalls the sons of the earth.

Our children have seen their fathers humbled in defeat. Our warriors have felt shame. And after defeat, they turn their days in idleness and contaminate their bodies with sweet food and strong drink. It matters little where we pass the rest of our days--they are not many. A few more hours, a few more winters, and none of the children of the great tribes that once lived on this earth, or that roamed in small bands in the woods, will be left to mourn the graves of a people once as powerful and hopeful as yours.

One thing we know which the white man may one day discover. Our God is the same God. You may think now that you own him as you wish to own our land. But you cannot. He is the Body of man. And his compassion is equal for the redman and the white. This earth is precious to him. And to harm the earth is to heap contempt on its creator. The whites, too, shall pass--perhaps sooner than other tribes. Continue to contaminate your bed, and you will one night suffocate in

your own waste. When the buffalo are all slaughtered, the wild horses all tamed, the secret corners of the forest heavy with the scent of many men, and the view of the ripe hills blotted by talking wires, where is the thicket? Gone. Where is the eagle? Gone. And what is it to say goodbye to the swift and the hunt? The end of living and the beginning of survival.

We might understand if we knew what it was that the white man dreams, what hopes he describes to his children on the long winter nights, what visions he burns into their minds, so they will wish for tomorrow. But we are savages. The white man's dreams are hidden from us. And because they are hidden, we will go our own way. If we agree, it will be to secure your reservation you have promised. There perhaps we may live out our brief days as we wish. When the last redman has vanished from the earth, and the memory is only the shadow of a cloud moving across the prairie, these shores and forest will still hold the spirits of my people, for they love this earth as the newborn loves its mother's heartbeat. If we sell you our land, love it as we've loved it. Care for it as we've cared for it. Hold in your mind the memory of the land, as it is when you take it. And with all your strength, with all your might, and with all your heart--preserve it for your children, and love it as God loves us all. One thing we know--our God is the same. This earth is precious to Him. Even the white man cannot be exempt from the common destiny.

Russell's
note 1

Key Points

1. As a result of mtg, it is apparent that an interim document mgmt system should be put in place ASAP.

2. Need to clarify

2. Concerns re: issue I.D. re: foreclosure of issues vs. fear of usurping licensing Bd determination of fact & law.

3. S/T producing info re: environment & health which could be useful to ~~NRC~~ NRC and should go into system.

4. S/T - 2nd in program

5. S/T - how to get them to put info into system voluntarily - before process begins. or early convening of licensing Bd to address procedural issues). (Dovercourt wants separate Bds. for each site)

6. Work arrangement thru negotiated rulemaking to get early participation by S/Ts.

7. Solution could be achieved thru
DOE mechanisms:
- grant agreements
- C & C process.

8. If you want to participate in system -
must provide your info - but at
what point?

9.

Please sign your name, Company,
business address & phone number.

NO.
EX.
MS.
UT.
LT.

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