

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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MEETING WITH ORGANIZATION OF AGREEMENT STATES,
AND THE CONFERENCE OF RADIATION CONTROL
PROGRAM DIRECTORS

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ROCKVILLE, MARYLAND

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TUESDAY, AUGUST 16, 2005

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The Commission met in open session at 10:00 a.m., at the Nuclear Regulatory Commission, One White Flint North, Rockville, Maryland, the Honorable Nils Diaz, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ Chairman of the Commission.

GREGORY B. JACZKO Member of the Commission

PETER B. LYONS Member of the Commission

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

STAFF AND PRESENTERS:

JARED THOMPSON, OAS Chair

DEBRA MCGAUGH, CRCPD Chairperson

STEVE COLLINS, OAS - Director of Rulemaking

BARBARA HAMRICK, OAS Chair-Elect

STANLEY FITCH, OAS Past-Chair

PEARCE O'KELLE, CRCPD Chairperson-Elect

EDGAR BAILEY, CRCPD Past-Chairperson

P R O C E E D I N G S

COMMISSIONER DIAZ: Good morning. It's good to see a very, very well attended meeting by the Agreement States and CRCPD. We are pleased to be with you this morning.

The Commission, of course, has a long-standing partnership with all of you. This partnership, like all partnerships, has its ups and downs. We always look at it as that it's always going up. It might have little dips here and there but we understand those to be part of the very strong work and very, very strong relationship that we have.

We look forward to continuing to enhance our relationships. We look forward to working with you. We look forward to continue hearing from you. And I'm sure you will continue to hear from us.

I think that there's no doubt the benefits that these partnerships have given to this country. It has really implemented very, very good programs that have benefitted the public health and safety for many, many years. And we will continue to do so.

I do believe that we met a year ago. I think we made significant progress since that time. We continue to work with you. And I think the staff continues to work with you day in and day out to make sure that there is a positive slope both the in the quality, the scope, the work, and the relationships that we hold with you.

This morning's meeting will be followed this afternoon by a closed meeting between the Commission and representatives of both the Organization of Agreement States and CRCPD.

At this moment I would like to pause for a minute and recognize the director of NRC's Office of State and Tribal Programs, Paul Lohaus. He thinks he will be retiring after many years of faithful service. I know I speak for my fellow Commissioners, but personally I want to thank Paul not only for his many, many years of service -- I think I need to stop here a minute.

A few months ago Paul came over and said I've got to leave. And I said, Paul, let's talk about that a little bit. And his arm is still hurting because I told him not until the fall. And to his credit, Paul said we will accommodate, Mr. Chairman, what the needs of the agency are, which he always has. And I personally want to thank you for that.

I think there is no doubt that the work that Paul has done with you, which you have implemented, has served this nation well. Paul, you have set and achieved high standards both of quality and consistency. And we look forward to continuing with those. I know that in the next few weeks you will make sure that your leadership will be continued and I would like to

regretfully introduce the next director -- oh, there she is, Janet Schlueter. I say Schlueter all the time, she corrects me all the time. She says Janet Schlueter.

Janet, as you know, works in my office and she thinks she's going to Paul's in October. We are arguing about that strongly at the moment. I'm trying to find the culprit who put her on this track. They are going to have a personal problem with me. But I believe you will find that Janet will actually provide the leadership that this office requires and she will have the support of the Chairman and the Commission in doing so.

We have many issues to cover today. Since there's only three Commissioners, that means things get tougher. When there are five, you have more. But now we're really going to get at you.

We are going to look at how we really move the meeting along by asking questions or making comments after each presentation rather than waiting until the very end. In this way, we can move the program along a little faster.

With that I would like to recognize both Mr. Jared Thompson, which is the chair of OAS, and Debra McGaugh, who is the CRCPD chairperson for some brief comments. And I know you have something special that you want to do. My fellow Commissioners.

COMMISSIONER JACZKO: I don't have any comments right now. Again, just to echo some of the words. I've had a brief opportunity to work with Paul. I've certainly enjoyed the meetings we've had and I appreciate the work he has done. I think 40 years of federal service, maybe or something you told me yesterday -- state and federal service -- that's very commendable obviously. I just want to congratulate you on all that work. I look forward to my first meeting with the OAS and CRCPD.

COMMISSIONER LYONS: I would just echo the comments from the Chairman and Commissioner Jaczko. It's good to see all of you again and certainly echo the comments on Paul's departure.

Paul, I've only interacted with you for a few months but I've valued your leadership and the role model that you provided. I'm looking for to working with Janet in this new role.

COMMISSIONER DIAZ: With that.

MR. THOMPSON: Thank you, Mr. Chairman. It's my pleasure to represent the Organization of Agreement States at this annual Commission briefing. OAS is always appreciative of the opportunity to sit down and discuss with each of you regulatory issues that affect the states and their programs.

I really don't know if I have anything different to say than what

the Chairman has said. It's almost like we have the same notes. So maybe I will just say ditto and shut up.

But as the Commissioner pointed out there has been positive strengthening of the NRC Agreement States working relationship. That is something that from an OAS perspective we are very pleased with and we want to see that continue just as the Chairman does.

This has been evident in many areas. There has been mutual cooperation. There has been a refreshingly open amount of communication which has facilitated closure on a lot of issues that it had in the past and it helps us to be able to move forward with some of the challenges we're going to face in the future.

And this communication and this cooperation is extended from each of your offices through different levels of management throughout the NRC. We are very, very pleased with the cooperation and the extension of the partnership the NRC has done with the Agreement States and OAS.

When we met last year we had several things that we brought before the Commission. And some of these we consider a success. And part of this is attributed to the positive working relationship we have grown and developed and reinforced.

The Part 35 petition for rulemaking. At the time of the Commission briefing last year we had just gotten that to the Commission, and subsequently to that, we have regulations now that address part of the concerns expressed by the Organization of Agreement States in their petition for rulemaking. We say thank you for that.

We've had much interaction with offices here in the NRC regarding the drafting of the NARM legislation that's now part of the Energy Bill. That's been very positive and it's been very beneficial to everyone in that area as well. And we have had many discussions with the Office of State and Tribal Programs as well as the Office of OGC.

Perhaps the biggest thing that we have the most pride in and most proud of is during the past weeks we have had a lot of intersection with the development of the transition plan for security. This helps with the understanding of the Agreement States and it gets us back to a level of normalcy as it was prior to the events that led to where we were prior to that. And of course, we are continuing to work on the development of the National Materials Program.

OAS has also developed a good strong working relationship with the Health Physics Society, particularly during the development of a position statement on the regulation of NARM and a draft legislative language. Some of this language did indeed become part of the recently

enacted Energy Bill of 2005.

Through the legislative contacts of the HPS, OAS has become more visible on the national level. OAS is very appreciative of the opportunity to work with HPS on this successful project.

And of course, OAS continues to have a strong working partnership with CRCPD as we both are one in the same in a sense. We also have the same goals in protecting public health and safety.

But now there is a challenge before us, before the NRC and the Agreement States with the passing of the Energy Bill, particularly with regard to the regulation of NARM. Some states, Agreement States and non-Agreement States have always regulated NARM. That's because we never differentiated between radioactive material. We considered radioactive material to be radioactive material. And that the risks and the hazards can be the same as byproduct material.

As we met with the Chairman's staff and each one of you back in May, OAS formally said that if the Energy Bill was enacted, we would willingly step forward and have the lead responsibility in the development of the NARM regs on a national level under the National Materials Program. The states have the experience and the NARM regulations to use the National Materials Program as a vehicle to facilitate a consistent national regulatory framework for the use of NARM in all states.

I am very pleased by the positiveness in the way that we have worked together over the course of this past year. I want to continue to see that grow further to the benefit of both the Agreement States and in the NRC. After all, I believe the NRC and the Agreement States have the same goal, protecting public health and safety.

Thank you. I'd like to introduce Ms. Debra McGaugh, chairperson of the Conference of Radiation Control Program Directors.

MS. MCGAUGH: I am chair of CRCPD. As you know, we represent both Agreement and non-Agreement States and so cover the whole gambit as Jared was talking about that states do. So we cover both AEA and non-AEA and x-rays as well. And we write suggested state regulations for covering all of those areas. That will come up, I think, a little bit later in some of our other topics that we're going to discuss.

I, as many of the members in CRCPD and OAS have worked with NRC in a lot of working groups. The one more recently was the working group working on the guidance for the disposition of solid materials. And that was a little bit of a challenge because the rule hadn't been written and we were trying to write the guidance. But we proceeded in doing that.

When the rule actually came out, as you know, there were a lot

of states that were not comfortable with it because it didn't meet our needs of dealing with unrestricted release and it tended to get rid of the guidance that we had been using all along to release materials. So we wanted to say we really appreciated that you withdrew that for the time being so that it can be discussed further and deal with what to do on that rule. So we're very glad that you did that.

The other thing that we will be talking about, Jared mentioned, the Energy Bill. And we will discuss that a little bit more.

But I wanted to mention our appreciation for the fact that NRC recognizes the work that all of the states have been doing regulating NARM and discrete sources and all of the aspects of radioactive material so that you're working with us and dealing with a waiver and helping us to continue the programs that are already in place.

So we are very thankful for that.

Lastly I want to give you, since I'm not sure I have the full five minutes or not -- I know but I was supposed to have 2.5 minutes. So I'm trying to do this quickly for you. Okay. That's good. Well, the one thing I did --

COMMISSIONER JACZKO: Feel free to use half.

MS. MCGAUGH: You were hoping it would be done. I will throw in one more point. That was that one of the goals is becoming chair of this organization was to continue working with OAS on a very strong relationship so that we can work together and work with NRC. So that is something we are continuing and expanding to grow that relationship.

We also want to grow them with other national organizations that deal with radioactive materials, like HPS and AAPM. So we're working on those relationships, too.

And finally then, I will give you -- I think last year you got copies of our directories. But we've moved to the modern days. You get them on CD. I can give you five just in case. If you want them in the version I usually like, which is paper, we can send them to you. That was the six.

I also wanted to pass these out to you. These are cards that CRCPD came up with that just help you with all the units that we have to deal with and the conversion between the special units that we don't use.

I think we just really appreciate being here and there's going to be a lot of other comments going on on other topics as we proceed.

COMMISSIONER DIAZ: Excellent.

MR. THOMPSON: I would like to introduce Steve Collins. He is with the Illinois Emergency Management Agency. He serves as the OAS Director of Rulemaking and Compatibility. This is a new director member that

OAS approved last year to help deal with the regulatory issues and prepare the petition for rulemaking.

Mr. Collins is going to discuss OAS' petition for rulemaking on the GL license rule.

MR. COLLINS: Go to Slide 2, since he's already introduced me. Slide 2 and 3 show the three components of the OAS petition for rulemaking on the general licensed devices that was submitted at the end of June 2005.

The first one is that it would require specific licensing for higher-activity devices currently available under 10 CFR 31.5 general license that are also subject to your registration.

The second point is since you're going to -- we're proposing that that be done by another method. Then we would delete the current registration requirement. And to further achieve ability to enter a better tracking of these devices, we would like to revise the compatibility of 10 CFR 31.6 from its current B to C.

Next slide.

The general license device in 31.5 allows very easy purchase of a wide range of devices containing radioactive materials. The activities range from microcuries to many curies. I have four pictures of the types of devices that we're talking about.

The first is your common exit sign that has 20 curies of tritium. And there is no registration required for this device.

The second, the one illustrated, has 10 millicuries of cadmium 109 and a portable x-ray fluorescence analyzer that's used to determine chemical composition of metals. Of course, this is reactor produced cadmium 109. There is no registration required of that device, either.

The next one is a picture of a general license device. It's an industrial fill level gauge. It contains either 100 or 300 millicuries of americium 241, depending on the customer's needs. Registration is required for this device, as it contains transuranic materials.

And the last one I have a picture of is an industrial gauging device used in a metals processing facility that contains 35 curies of americium 241. This is in the form of 7 five curie sources.

This is just to illustrate the very wide range of devices and sources. The last two are under the GL registration requirement of NRC.

A question would be should a device containing these larger quantities of americium or other radionuclides of interest be available under a general license. There's some problems.

And the next slide is the list of problems that we have and

regulatory issues involved with the general licensed devices. Our experience shows that there is a low awareness of the regulatory requirements by the general licensees. This is due mainly to high personnel turnover in institutional sector and institutional knowledge is lost very quickly.

Next slide.

Also, under this program there's minimal interaction with the regulator. There's no routine inspections. Unless you're like one of the few states that does an annual follow-up with each licensee, there's just no opportunity for routine interaction.

And we believe the GL device manufacturer service infrastructure is collapsing. There is more licensees providing services of their own devices without a proper knowledge base many times. And these are the problems that were discussed in the 2004 CRCPD meeting and at the 2004 OAS meeting. And that essentially makes up the rationale for the petition.

One other issue is the compatibility with 10 CFR 31.5, the "D" to "B" compatibility change. The GL device registration requirement is a compatibility category B. And the states that had pre-existing, effective GL regulatory programs were suddenly found incompatible.

Many states that were like NRC up until that point and that they were not tracking the licenses or the devices very much needed this requirement. Many states or, at least 12 that were already registering or licensing and tracking these devices, like Illinois was doing it by serial number, plus some others, thought that suddenly being found not compatible because of a state's more stringent requirements that applied only after the device was in use in the state, was an unintended consequence, because the NRC stated purpose for the compatibility category D to B change was (1) to ensure better tracking of certain general licensees and the devices they possessed; and (2) that general licensees are aware of and understand the requirements for the possession of the devices containing byproduct material.

Next slide.

Finishing with 31.5 and going to 31.6, the "C" to "B" compatibility change. It allow GL device manufacturers to service devices in Agreement States without reciprocity or notification. It removes a tool that was used by states to verify the status of the devices.

That brings us to the main focus of the whole thing: Control and accountability. Now, we used that term to distinguish from security. If you read CFR Part 20 the old term that has been used for decades is security. But this is not common defense and security as it is security of

sources. So we have changed it to control and accountability to get the idea of the concept across without any possible confusion factor.

No regulatory review prior to purchase of the devices containing up to many multi-curie quantities of radioactive material.

This is Slide 13.

No routine inspections.

No enhanced requirements that are applied to the GL devices.

That's an issue continued.

There's continued incidents involving real or suspected GL devices.

And recently there's an incident in Alabama that I will use to make the point that there continue to be incidents involving real or suspected GL devices that do result in personnel exposure and economic loss. The GL gauging device used to measure slurry in pipes which occurred in Alabama in 2005, in this case a device with 200 millicuries of cesium was on a portable barrage used for dredging.

Now, Alabama is one of the states that requires a specific license for GL devices that are portable or that are part of a portable system. The out of state general licensee failed to obtain the required specific license before working in Alabama or to even notify the state of the work activities.

The device apparently malfunctioned during use and the general licensee shipped the device for repair from Alabama to a manufacturer in Kentucky. The device was transferred five times during the shipping process.

Upon receipt, the manufacturer noted that the device shutter was broken and partially open. Fortunately, a knowledgeable specific licensee in Alabama notified the Alabama radiation control program of the problem and currently that reconstruction process is going on. And David Walter in Alabama will be providing more information. He's the contact for that.

Please note that originally when a GL concept was instituted, there were no portable GL devices, only fixed ones. Some states still think there shouldn't be any portable GL devices with any significant activity.

I guess I will add that it was probably a state that licensed the first portable GL device. Wasn't it? Okay. So the states aren't pure in this either.

Now, in this incident the device had been painted. I mean all of it painted, obscuring all labels.

And the general licensee removed and shipped the device, which they are not allowed to do, and shipped it to the source, to the

manufacturer for repair.

The device shutter was partially opened, even broke upon receipt. It should never be handled at all with the shutter open.

Next slide.

What do we believe the benefits of the OAS proposal are? As the Alabama incident illustrates, many of the problems, no notification to state, device painted over, all of those problems mentioned.

We think the OAS proposal will establish a higher national standard of radioactive material regulation that addresses these GL regulatory issues that I've mentioned.

We would like to have some regulatory review required through a licensing process of some sort of higher activity devices that are purchased prior to receipt.

More benefits on the next slide.

Increase licensee awareness of regulatory requirements by virtue of the licensing and inspection process. And it would improve the control and accountability of the devices. And this would all reduce the incident frequency.

Another point that was not on that slide that I didn't think of until last Thursday while talking with the guy in our state that's responsible for our GL program, was if we register or license these devices, why for those that are under the NRC's threshold, if it's not allowed that we license these and we can't track these, what's the use of distributor reports for these devices?

It also appears from the interpretive letter sent to Maine by OGC that the states are not allowed any means to follow up on transfers or even reports of transfers or lack of reports to transfers from persons with a general license.

So based on all of these issues and problems, we think that the states are really looking forward to working with the NRC to find a better means of accomplishing our common goal of ensuring the control and accountability of these GL sources and devices. Our petition is what we think is one good method to do that.

That's all of my presentation. Thank you.

COMMISSIONER DIAZ: Thank you, Mr. Collins. I think we will do what we were going to say. We are going to take each issue. I appreciate the Agreement States bringing this issue to us. I think the staff is putting up an effort to make sure that we get fully and currently informed --

MR. COLLINS: Sorry.

COMMISSIONER DIAZ: Do you need to say something?

MR. COLLINS: I will in a minute.

COMMISSIONER DIAZ: Okay.

Of course, being that this is in a petition state, we are not going to really go on the merits of the issue. Anything that's good for you and it increases control on accountability should be good for public health and safety. That's as far as I will be able to go on this issue.

I do believe the staff is preparing a paper to make sure the Commission sees the different aspects of it. And I believe the staff has worked out a way on how to deal with the issue during a transition time. Meaning that as we go into the actual petition and resolving the issues, there must be a way in which we can handle the present states.

I don't have any other comments on this issue except that we believe it's an important issue and will be properly addressed in a timely manner.

COMMISSIONER JACZKO: I wanted to ask a few questions.

First of all, what is the status right now of all the Agreement States in terms of their adoption of the GL rule? Do you have a break down of that?

MR. COLLINS: No, I do not. The last I heard there were several states, like 12 or so, that were in process that didn't have it completed. But your OSTP has a better accounting of that than I do.

COMMISSIONER DIAZ: Paul will be able to answer that, do you want to get to a microphone please.

MR. LOHAUS: Paul Lohaus, State and Tribal Programs.

The information here is from our regulation status sheets which provides the status of each state's regulation. But I want to identify first that 11 states, and Steve mentioned 12, so we will need to talk. I have 11 states have existing GL registration programs that are more restrictive than NRC's program.

Fourteen states have adopted a final GL rule. Some of those states in their rules based on a review have a more restrictive program. We have comments we have identified on those rules.

Six states have developed proposed rules which they have submitted to NRC staff for review. Again, I will note that some of those rules we have comments on those rules.

For example, the Alabama rule, as Steve noted, is more restrictive than NRC's rule. It does not allow portable devices, for example. There are two states that are in the process of developing proposed rules.

If you would like, I can go back through. We have 14 states --

COMMISSIONER JACZKO: Thank you.

SPEAKER: Fourteen with a final rule. Six states that have developed a proposed rule. Two states that are developing proposed rules. As I mentioned earlier, eleven states have existing registration programs that have been in effect for some time.

COMMISSIONER JACZKO: One of the reason I ask is I think, as the Chairman said, anything that certainly enhances public health and safety is something that the Commission should take a strong look at.

One of the questions that I -- and I appreciate Paul providing that information. One of the questions I'm interested in is how we deal with the interim situation which is right now we do have a regulation in place. The Agreement States had until 2004 to adopt the GL rule. That has clearly not happened for all Agreement States

So I'm wondering if you could give me your thoughts on what the best way if for us to proceed going forward with those states that have yet to adopt the GL rule, particularly those states that have greater registration requirements for some of the general licensed devices?

MR. COLLINS: I definitely have some suggestions there, Commissioner. Those of us that have those more restrictive programs right now would like for you to hold in abeyance your forcing us to change that until we have a chance to work with you on maybe a better method to raise the national level up to the level of some of those states, because we didn't get more restrictive for fun.

We thought it was necessary. And we would like to share all the reasons for that and work with you in developing something in between that would allow those states to continue tracking those other devices.

The main reason that we track some of those devices that you don't is because those others that have states with mini-mills that have had a contamination event and spent from 11 million to \$30 million -- well, we haven't, a licensee did -- cleaning those up. And it was a very intensive involvement from out state programs. We would like to make sure we do our best to prevent that.

COMMISSIONER JACZKO: What about that states? Would that abeyance apply to the states that don't currently register general licensed or would they be required then to comply fully at this point? And so we'd just hold in abeyance those states that have a current registration? Is that what you're suggesting?

MR. THOMPSON: I would suggest that you hold in abeyance those with existing regulations.

When we met with you back in May we'd received a letter from the State of Mississippi. And in his letter, the current NRC rule as written is

good for those states that did not have a program. Those states that don't have a program need to fall in line with what the NRC requires. The existing programs, are the ones this seems to have the most negative impact on.

COMMISSIONER JACZKO: Are those the ones -- I'm sorry. Those with the existing programs, those are the states that currently require registration of general licensed devices or that's more? That's the 12 states?

MR. COLLINS: The ones that we're asking you to hold in abeyance are those that have what would be deemed a more restrictive program than NRC.

COMMISSIONER JACZKO: In some cases there may be states that have a program?

MR. COLLINS: Right.

COMMISSIONER JACZKO: But don't have a more restrictive program?

MR. COLLINS: Right.

COMMISSIONER JACZKO: So you'd be asking for the states that have a more restrictive program be held in abeyance?

MR. COLLINS: Yes.

COMMISSIONER JACZKO: The next question I have and maybe I'll ask of you, Mr. Collins.

This certainly raises an issue that we're trying to deal with right now which is how to address issues of states implementing regulations. And we can go through the list of many states at this point who have not completed many regulations and amendments that I think are certainly important and I think certainly Illinois I think is one state that has quite a few regulations outstanding.

I know we've received some information on that and we're working to process it. So here's certainly an instance where, I think, there are some issues to look at in terms of perhaps putting some of those regulations in abeyance but what about some of the other cases where we have outstanding regulations?

What do you as the way forward to getting those issues resolved and getting those states to be compatible in whatever form was required at the time?

MR. COLLINS: Well, in Illinois' case ours happens to be a matter of circumstance. We had the person who was developing all these rules had a job change. They got transferred to another person who is all of a sudden ordered to the Middle East for a year.

So we had to reassign that again. Combine that with the fact

that Illinois opted to go with the 274-I which pulled another amount of resource away that could have been devoted to regulation revision because we thought that was more important.

It's a combination of things in our particular case. The states are going to have to put more effort into adopting rules in a timely fashion. Illinois is working to do that. I can't speak for the others on that.

COMMISSIONER JACZKO: By putting more -- this would be my last question. By putting more effort, is this a budget resource issue? What do you mean by putting more effort? What needs to happen and what can we from the Commission level do to get those things to happen?

MR. COLLINS: I don't know that from the Commission level you can do much. Imposing heightened oversight is not necessarily going to be the most efficient way to get it done.

In our particular case we look at what has the most impact on health and safety. And if we have a pretty good rule that's doing a good job at achieving health and safety but it's not quite in line with yours, sometimes our priorities say keep doing a really good job here and we'll get to this really soon but it might not be quite enough to meet the three-year deadline.

So it's tight resources and time. And it's not a recalcitrant attitude, you know, that we're not going to do it, not any more at least for Illinois. We have every intention of doing it. It's just a matter of being able to get it done in a timely manner.

I do have one other thing to add since we're talking about the states and their response. And Paul gave very good details of which states are what as far as the total numbers.

We sent out a letter asking the states to sign how many of you support this petition or the concept of the petition. And we're still waiting for four states to respond.

Twenty-nine have responded. Twenty-seven out of 29 support the petition. Two did not support it and their reasons are basically that when a specific licensing would be more costly. And I'll tell you that Illinois is one of those that didn't support it even though I'm presenting this to you and drafting the bill.

But Illinois has a program where we have another means for all of these that we register which is more than you do. Annually we send a detailed questionnaire which is not only an inspection check list but an accountability type thing that helps educate whoever the person is there now updates our database by serial number. It tells them they have to update that and go through the check list.

And then a representative sample of those, we ask them okay

send us copies of your leak test records. Send us copies of your check lists to verify they're really doing it. So real accountability and stuff is accomplished the way we do ours which is different than all the other states. And that's the reason, I think, we need to talk with you some more about there are better ways to do this, less expensively.

CHAIRMAN DIAZ: Commissioner Lyons.

COMMISSIONER LYONS: While I was out at the CRCPD meeting in Kansas City, there was quite a bit of discussion on this issue. And I do appreciate that you put together the petition that's now going through the appropriate review processes here.

One question -- I don't know if you can shed light on this or not. But it's somewhat puzzled me. At the time of the compatibility change that led to the concerns from many of the states, there was a letter that went from STP to your organizations expressing concern on the transboundary issues associated with the need to, at that time, go to the higher level of compatibility.

I'm just curious, Steve, if you or any of your colleagues can talk a little bit about from your perspectives how do you see the importance of so-called transboundary issues in this overall issue.

MR. COLLINS: Okay. I think they're very important. We do not in any way want to interfere with interstate commerce which is the primary place these transboundary issues come from, not the only place.

Once again, for all those states that weren't doing any kind of registration or tracking of these in any way, they need to come up to that level of tracking those.

For the manufacture and distribution of these devices, we feel very strongly that there should be a compatibility B level in whatever method of licensing is used for these.

When it comes to what is done with that device or the source in the device, once it's within a state and in place, we would like the flexibility to be able to choose to track that or account for that at a more restrictive level than NRC has currently chosen to set.

So in that particular case a lot of the states would like the option to be more restrictive in a way that really doesn't interfere with interstate commerce. And we don't feel that it has transboundary considerations because what we do then, and we charge a fee to recover our expense for doing what we do, to track those and to send them this annual questionnaire and do all of that sort of stuff. We would like to be able to do that because we don't see any transboundary considerations there. And that's the reason that when the rule came out, those of us that had more restrictive programs that only affected what happened to it once it got into our

state and settled in one place unless it's portable, we didn't really see that there was a transboundary consideration and that's why you didn't hear any grip or complaint or anything out of any of the states until the main letter went out. All of a sudden we were surprised.

Oh, we didn't realize that that was intended and that's why earlier I said an unintended consequence is what we thought it was.

COMMISSIONER LYONS: I appreciate that perspective. Does anyone else want to comment on this transboundary issue because I gather that was of particular concern in the agency's view?

MR. BAILEY: I'll reiterate a lot of what Steve said. And even when we're regulating our x-ray sources, we are very, very concerned and look at the effects on interstate commerce. We've had a challenge in many instances.

But from a standpoint, and what we've been told legally, is as long as you're requiring the same thing of in-state vendors as out-of-state vendors, then you've pretty much satisfied the interstate commerce clause.

But I think we need to really look at how we are addressing transboundary issues because I think from a state's perspective we feel that sometimes, maybe there's some concerns or influences that are being made by certain people for transboundary issues that we're not having an input on addressing their concerns.

I understand it from manufacturers' and distributors' standpoint. It makes it a nice neat package if everything is the same across the country and they can develop one little package to give to their clients and customers.

But in reality some of this needs to be reserved for the states. And as long as the restrictions are placed equally on in-state and out-of-state vendors, then I think we need to reconsider maybe some of the importance for putting on transboundary considerations, at least have some input at the time that those discussions are taking place.

COMMISSIONER LYONS: I appreciate those comments.

MR. FITCH: Commissioner, many states try and track their vendors who come into the states to provide various services. It might be from x-ray machines to leak tests, so on and so forth.

By reducing the compatibility rating on 31.6 that means the states could still track and probably also require licensure of these devices.

That means the states could still track whoever is coming interstate according to reciprocity much as is the case currently for medical oncology groups that come in such as medical oncology when they do resourcing.

The states see this as a disadvantage in not being able to track

them through reciprocity because we do ensure that people who provide services in our state possess adequate credentials to discharge their duties.

MR. THOMPSON: Along the lines of Commissioner Lyons, Bill Pesetti of Florida, Florida has a petition also before the Commission. In my discussions with him, and I brought up the same question you did regarding the transboundary issues.

Much as Steve has described it as an unintended consequence or unintended interpretation of how the regulation was written and read, that Florida did not perceive it to be a transboundary issue for them and they have as a restrictive program probably as Illinois.

COMMISSIONER LYONS: Thank you.

COMMISSIONER DIAZ: I think we need to go to the next subject. But I think this subject brought out some of the issues that have created in the past issues for both of us to resolve.

Let me select two words to describe what I think it seems that we need to do and that we really expect the states to do and it's the issue of consistency and the issue of responsiveness.

You expect us to be consistent and responsive and in the same token we do expect you to be consistent and responsive to our requirements. We need to work with you. We need to make sure that things are done.

But those two issues always come back in some way or another. I think we have gone a long way but we need to make sure that we apply this both ways and that this is one of the issues that concerns us. Consistency is a very big word. Consistency in policy. Consistency in interpretation. Consistency in implementation.

Although there may be variations, consistency doesn't mean exactly the same. And we know there are variations in the states. But I think we both need to work to make sure that whatever issues there are we both work very hard at consistency and implementation.

With that, I'd like to go to the next issue.

MR. THOMPSON: The next item on the agenda is discussing a couple of items regarding industrial radiography.

I will be addressing the first item and Debra will be discussing the second item.

This goes back to interpretation of a regulation regarding the two-man rule in industrial radiography.

The State of Texas had an interpretation of what the two-man rule was as far as they had perceived it. And NRC had a different type of interpretation. And they have been held -- during their last IMPEP, this

particular finding was held in abeyance pending the determination of a petition for rulemaking to change it.

And we have been discussing with Marty Virgilio regarding this rule. We are waiting on language -- the State of Texas is voluntarily developing regulatory language to perhaps fix or address the issue with the two-man rule interpretation. That is supposed to be submitted to OAS. We're going to do a formal petition for rulemaking using the Texas language to develop language.

We were supposed to have this to the Commission by September 1st. But because of the activities associated with the transition plan and some other issues that came up, we're probably not going to meet that deadline. We're probably going to be looking at more October or maybe fall. We'll probably be talking to Marty more about this because this is an issue that comes up with every MRB and the IMPEP in states that may be interpreting the rules the same way as Texas is. But we are moving forward on this and we intend to get a petition forwarded as soon as possible.

COMMISSIONER DIAZ: Thank you. I think we're pleased you're moving forward with a petition. I would certainly give it our serious consideration. Again, like a broken record, we need to go back to the issue of consistency and responsiveness and how we work with those things.

We will try our very best to be as consistent or responsive to these issues. The two-person rule is a very old rule.

I remember 39 years ago when I was a baby and I was moving --
(Laughter.)

COMMISSIONER DIAZ: I had a second person watching over me. I think it was Paul. I can't remember.

But I think the two-person rule which has been around and used effectively to prevent accidents and prevent abandonment of situations that we all have seen. I clearly remember when we used to crank up an accelerator and we said it has to be two persons.

It goes in many ways. I think the definition of what is the rule, therefore, is important. What are you trying to achieve and how are you going to achieve it. How at the very end of whatever it is you would say we are protecting the personnel. We are protecting the public.

That's what the aim of the rule is. It's not supposed to be restrictive. It's supposed to be functional to be able to allow you to do what needs to be done. At the same time it is in there to prevent what we have seen many times.

We all have seen it. I remember there was this fellow in this

national lab who always had the habit whenever he passed by an interlock. He would stick a pen in the interlock. And then the person behind him was supposed to pull it out. That was a few years ago.

But those are the kind of things that we really want to make sure that provides the framework and it's the framework that we're looking for.

COMMISSIONER JACZKO: Mr. Thompson, you mentioned a couple of times the transition plan. One of the things you just mentioned now that that's one of the reasons why you'd be slightly delayed on getting the petition for rulemaking to us on the two person rule. Are there other things that you think will be affected because of the work to move on to the transition plan. Certainly, this is an important thing, since it will be dealing with some materials issues and controlled materials.

MR. THOMPSON: From my understanding and talking to the director of the Texas program this has been moving along pretty well up to the transition plan. And it's just something that got kind of pushed in the corner until we got over this little hump. I don't anticipate any more delays from OAS perspective.

COMMISSIONER JACZKO: With the two-person rule. I'm asking more broadly are there another initiatives --

MR. THOMPSON: I don't anticipate any.

COMMISSIONER LYONS: I had a question on how states are certified in these programs. But Debbie, were you going to talk -- I think you're going to talk next on that specific subject.

MS. MCGAUGH: Yes.

COMMISSIONER LYONS: I will hold that question.

MR. O'KELLE: If I can make one comment. I want to make sure there's not any misunderstanding.

I think the Texas position is not necessarily that we don't want or need two people. It's just where those two people may be and what functions they may be performing. In the interest of performance based, I think we need to look at it from that aspect. And one of the things that Texas does require is they don't use radiographer assistance. I know you've mentioned consistency, but we must also remember flexibility in performance based as well.

COMMISSIONER DIAZ: I think consistency in the delivery of the function is important. That is independent of the rest of the progress.

MR. BAILEY: Mr. Chairman, I would hazard to offer the assistance of two people who are in this room who were involved in the very first putting it into regulations and so forth. In fact, Ruth MacBerney and I happened to be working together at that time, and actually, Ruth's section

was working in my division when that rule was adopted in that Texas for the first time. I'm sure Ruth and I would both be happy to work with anybody on how it was interpreted for 30-something years in industrial radiography. Give Ruth a little credit.

COMMISSIONER DIAZ: All right. Thank you Ed and Ruth, I appreciate that.

MS. MCGAUGH: Is it on? Good.

I'm going to talk about the certification program a little bit. The National Materials Program, as we all know, is a real worthwhile effort and it uses the knowledge and experience that has been gained over the years by the states. And it's used to establish some effective programs for regulating radioactive material in the joint federal-state arena that we have.

As one of the first attempts at using this process, there are a lot of pilot projects out there. And one of them is pilot project two, which is designed to have CRCPD, one of our committees, the G-34 committee, if you see that number on there, serve as the lead for overseeing a national industrial radiography certification program on safety.

Let me describe what we're doing currently and then tell you what we're proposing for the other.

Right now there has been an exam that was created here several years ago by Texas. And that is the exam with modification that's being used. So Texas was the first certifying state to do this. And then there has been nine states that have come on as certifying states for doing the exam.

What has happened currently, what happens now is a state will send their certifying program, what they want to do, and it goes to one of the people from Texas. And they review it. So it's not the committee that's reviewing it currently. It goes to someone who is very familiar with the whole system, reviews it and then they are issued a certification that says, yes, you can now do your own exam and issue as certification to the radiographer.

There is also ASNT, which is also a certifying body. And they have been reviewed and approved by both CRCPD and NRC. CRCPD can cover the x-ray portion as well as the materials.

So right now that's what's happening. And we have ten states total that are certifying ones.

Some states decide they just want to administer the exam but they use ASNT to issue the certificate. They don't become certifying states. They just let ASNT do that.

What the goal is, is to create a certifying committee instead of having it go through just one person. Have a committee -- membership is

undetermined right now. G-34 is made up of state, NRC and an industry rep. So it would be some proportion of that or some other that would be the membership of the certifying.

They would then review any certification programs that come from the states. So it would be the full committee. They would make a recommendation to a management board. And that membership has also not been determined. This is all going to be worked on.

It's possible that it would be significantly with CRCPD only because they have the master contract for it with the Texas program and sort of issue the certifications right now.

But the management board, whoever that might be, would then issue the certificate. And periodically also the certifying committee would review the programs that have all been certified to see if they remain comparable. Not compatible but a comparable program. So we just want to make sure that they stay that way.

That is the goal. And the G-34 and using this pilot project, the idea is to try to work this through the process, see if we can work with NRC and the states and we will see about the industry reps to get this to work together and be the first example of doing the NMP.

Does that answer --

COMMISSIONER DIAZ: I don't know what it answers but it certainly brings the issue forward. Well, we certainly will consider this issue as it comes forward. I believe the staff will be informing the Commission of the results of this discussion.

I think going back to the issue is how do you see the possibilities of carrying this as a National program? Are you going to be able to get people to agree and get it into a form that is really a program that is implementable on a National scale?

MS MC GAUGH: I think we can. I think the fact that it's being done right now -- it's just a little less formal than we are hoping to have it be -- Yes, I think we can do it.

And I think it's a very good opportunity for us to use this process and work together.

COMMISSIONER DIAZ: Okay. All right.

COMMISSIONER JACZKO: I don't have any questions on this.

COMMISSIONER LYONS: In general I think moving towards better national uniformity is going to be positive.

The question that I was puzzled about, and I think you almost answered it but I'm still a little confused. For the states that are certified now or states that consider themselves as certifying states, who is giving them that

responsibility? It seems to all track back to an exam started in Texas. Is it Texas giving --

MS. MC GAUGH: No. It's not. It's CRCPD.

Go ahead, Ed.

MR. BAILEY: Basically what happens each state has to adopt their own regulations. In adopting those regulations, they decide whether they want to certify the radiographers or not. And by saying certify them, they are the ones who issue the document to them.

COMMISSIONER LYONS: Each individual state --

MR. BAILEY: They can. That's one way they can do it.

Another model is a that state can decide, no, we are simply going to accept a certification by anybody that's a certifying body. So a radiographer in that particular state might go with ASNT certification or they might choose to go to Texas or to Oklahoma or Louisiana, Illinois and be certified there. And they would be accepted in the state that's not a certifying body.

But up until this point -- and I'd ask somebody to jump in to correct me if I misspeak -- everyone is basically using the Texas test. That's correct.

MS. MCGAUGH: With modifications to it based on their individual programs.

MR. BAILEY: If there are changes in a state, state regulations and state law that are different from what were in the Texas program, which did have some new things in it -- it doesn't read like NRC's -- then they have to modify the exam, modify the questions to meet that state's regulation.

MR. O'KELLE: As a follow-up, the program is actually run through CRCPD. Texas just happens to do all the work.

The head of the committee was from Texas and is very, very knowledgeable in this area. And it is one of the states that -- we are a certifying state and we have contracted with CRCPD which actually brokers through the Texas exam to us.

We are required to meet certain standards. We have to go and get trained in how to proctor tests. We have to make sure that the tests -- the validity of it, the security of it. And we have certain hoops to jump through.

So it's not a matter of saying, give us a test and we give it back to them. It is a very formal program, and for us it has been working well. Instead of reinventing the wheel, we chose to go with a program that had already been up and working.

I think it's a great model to follow. We may need to do some

tweaks here and there. But I think it's definitely doable on the national level.

MR. BAILEY: Could I just maybe explain a little more on to what Pearce said. The reason for CRCPD being the broker of it was that when Texas first went out with the program, they did not want to have to try to negotiate contracts with 32 other states.

I mean, if your contract process was like it was in Texas or it is in California, you want a simple way to do it. So they went to CRCPD, who could then offer it as a service and a state could buy it much cheaper than they could sign a separate contract with another state. That's sort of the origin of why CRCPD got into the brokerage business.

COMMISSIONER DIAZ: We fully understand the issue of dealing with many states at the same time.

Next issue Ms. Hamrick.

MS. HAMRICK: I just want to start out by thanking you and the NRC staff for the work that was done to establish the guidance on the letters of support to the states. These letters which can be sent to senior state officials upon the direction of the NRC's management review board, are very important to the state radiation programs to focus their senior state management on the state radiation programs, their needs and their successes.

It's with this in mind that we would like to bring forward a concern of our membership regarding the importance of having a consolidated state radiation program. That is to say that many of our state members and OAS board members support the consolidation of various aspects of radiation control regulation into a single state program, and further even support the proposition that a model state program function as an independent agency reporting directly to the governor's office much like the NRC Commission is an independent agency in the Federal scheme.

In 1995, CRCPD developed a formal position on the issue of consolidated state programs, which position expresses many of the same general concerns that the OAS members have regarding the problems and the inefficiencies that a fragmented radiation control program can create. These difficulties with which the NRC is familiar at the Federal level such as those caused by the disparity between the NRC and EPA approaches to decommissioning.

These problems exist often many times over at the state level, distracting from the real business of radiation protection and also undermining public confidence in the regulatory processes.

The many benefits of a consolidated program includes uniformity in standards across all types of radiation and exposure which leads

to a greater public confidence in the standards that are set. And it also leads to greater political confidence in the agency's processes, which will be especially important if we do face a terrorist event using radioactive material. It also provides a center of expertise on the subject of radiation.

Recognizing that the Commission would not recommend or suggest that a state conduct its internal affairs in a specific way, it would still be meaningful for the Commission to in some way recognize the value of consolidating radiation protection expertise into a single program. We bring this issue to you just to raise awareness that this is an issue of concern for the states. And although we can and we do attempt to raise these issues with our own senior state officials, the radiation control programs are often so deeply buried within state government that the importance of these concerns may not be readily recognized and might receive a more appropriate level of attention if the value of consolidating this expertise within a single program were also recognized by our Federal counterparts.

COMMISSIONER DIAZ: Thank you very much. The Commission fully appreciates your position. And I think you already stated the fact that we do not interfere in the way the states manage these issues.

Let me ask you this maybe from everybody. What response are you getting from the senior officials in the states regarding your request of trying to unify or consolidate? Is it positive? They have been not been responsive. Let me just go around. Start quickly very briefly just to give the Commission a flavor.

MR. BAILEY: I would hesitate to say that our governor even knows that this is an issue. I know that certain members of our legislature are very much in favor of splitting it even more. To make individual parts of the -- and even the agreement program split between agencies such as one agency to handle decommissionings, another agency to handle waste and the agency de jour to handle everything else.

If anything, at least in California there appears to be a movement to split things apart rather than to consolidate.

MR. O'KELLE: As one of the programs that is somewhat disjointed and split, we're getting very little, if any, support not only from our governor and legislature but even within our own agency. Basically they say it's working. What's the problem.

But the real issue is that we're way down on the totem pole. When you're in an agency whose functions cover provision of health services, prevention of disease as well as all the EPA functions of maintaining clean air, water and so forth, we are the type that we don't even get noticed until something goes wrong.

There's not a whole lot of push for it. It's very similar to the Federal level. There's nobody pushing for everything in the Federal level to be together either.

But even just a mild statement of support for this type of organization without getting into the actively lobbying a state to change their organization would go a long way, the same way that the letters of support have gone to help.

MS. MCGAUGH: I think we're one of the more fortunate states in that many ways we are consolidated. We have the Hanford Nuclear Reservation and we have some uranium mines and mills that are going through decommissioning. Those seem to have brought us to the governor's attention, which is maybe good or bad. But it also means they recognize we are the radiation control agency.

And the only way that that is different -- and we have the same issue that NRC and EPA have -- the group that does the clean up at Hanford, has control of those limits, is the Department of Oncology, which is not where the radiation group is. So we have the same issue on the clean up numbers because they follow EPA and, of course, we're dealing with the NRC rules.

So we do have that breakdown in being consolidated.

MR. THOMPSON: Right now in Arkansas currently we're a consolidated unit. But we were recently -- the legislature combined us with one of our larger Arkansas agencies, the Department of Health and Human Services now. With that because they don't exactly know what we do, there has been some discussion about the possibility of splitting out, keeping the health portion of the agreement and sending the industrial side maybe to the Department of Environmental Quality, splitting the program.

We're a small program. Staff of about 30. We have to be crossed trained to be able to do everything. This will further impact our ability to actually carry out the program, because really we will have to have two staffs to be able to do just a very small portion of the medical side and probably a larger portion of the industrial side.

MS. HAMRICK: Mr. Bailey covered the issues in California.

MR. COLLINS: Illinois has a consolidated program. Our highest technical manager is just one step removed from the governor, so we don't have the problem. It works much more efficiently that way in our opinion.

MR. FITCH: I just have to make this statement. When I was an employee of the state, the personal observation. As far as our agreement states program it's administered through the same people, same program. So we have unification there.

However, in my state we're not recognized as the experts on radiation protection, which is really a shortcoming on our part because of the fact that there is no single radiation safety officer, if you would, that handles the issues of the state.

As you're aware we have a strong Department of Energy presence in the state of New Mexico. However, typically, any radiation safety issues related to DOE emissions or problems are referred to the hazardous waste bureau. So we see this as a problem, because those people are obviously not health physicists. They're RICRA experts.

So that's a difficulty for us as far as consolidating in the state, the expertise and the authority to regulate the issues of the state.

Now, our regulations are like NRC's, we cannot regulate people we do not license. As a result of that, a bunch of DOE activities are out of our purview. Other activities in the state are out of our purview. When it comes down to the agreement state programs, we are administering that from the same program.

COMMISSIONER JACZKO: I would certainly just echo some of the comments of the Chairman, clearly how the states manage these programs is largely a decision to be made by the state.

One of the things that we hear from you quite a bit is that you do have the ability to manage and direct these programs the way that you feel is appropriate.

And I think that certainly applies to whatever organizational structure you want to have or your states determine to have.

The one thing that troubles me a little bit that has come out of this is how often you said you're somewhere -- I think, Mr. O'Kelle, you mentioned somewhere down on the totem pole. I think that is certainly -- these are very important issues that are dealt with by all of you as you well recognize.

I think that is certainly one of the challenges that, it seems, that continues to be faced by the various Agreement State programs is their ability to get the proper recognition and support from within the state government.

And I would certainly encourage you to figure out ways to increase that particularly with new responsibilities and new challenges that will come as a result of the transition plan and implementing those new requirements.

COMMISSIONER LYONS: I would just agree with the general comments, Mr. Chairman. I didn't have specific questions on this.

COMMISSIONER DIAZ: All right. Thank you very much.
We'll go to Energy Policy Act.

MS. MCGAUGH: And we brought that up. And I'll turn this over to other people. But I did want to mention that the Energy Policy brings in some radioactive material that we have been regulating as states for many, many years.

And so the important issue is to use all of the knowledge that we have and not negate what we have been doing over the years dealing with this. So we want to be actively involved in the transition to you being able to regulate those materials.

And I'm going to turn to -- I think both Ed and Pearce have some input on this issue.

MR. O'KELLE: I don't know what we can really add that hasn't already been covered as far as the basics. But I do think we face a challenge.

I think from a state perspective we'd like to see early state involvement on how NRC intends to implement the requirements that are now placed on them by the Energy Bill.

One of the major challenges is going to be how NRC is going to interact with the non-Agreement States that are already regulating these materials.

I think it's going to be much easier to deal with amending the agreements of the Agreement States that are already in place. But I think the real bear we're going to have to wrestle with is how are we going to deal with the non-Agreement States.

Now that I am representing CRCPD, they are now part of our constituency. And we really want to make sure that their interests are also taken into account.

That being said, I think we've gone over and over about how the states have been doing this for years and in the interest of the National Materials Program we would hope that there would be a mechanism for utilizing as much of what we already have in place as possible.

And I think what we'd like to see is an early interaction with the states on even the policy setting on how NRC is going to tackle this. I think we're very encouraged by the potential waiver until we get our ducks in a row and we highly encourage that. But we'd also highly encourage formation of a working group task force real soon with major state input to assist in developing this program.

COMMISSIONER DIAZ: Mr. Bailey.

MR. BAILEY: I'd just add a little bit to that. I think most of the Agreement States certainly for many, many years have urged this to happen, that NRC be given authority over NARM.

And I think, therefore, we really support NRC getting it. The

statements that have been made here, I think, are based on a premises that I hope is true and I believe will be true and that is that this transition and the development of the regulations will be based on common sense and not an effort to reinvent the wheel. We've got programs in place. We just need to transition smoothly and get on with it.

For Agreement States, I see no change in what they're doing. For the non-Agreement States, there are a few. Not a large number that have active NARM programs and those will have to be worked with. And they may have some better ideas than the Agreement States have had all these years on how to do these things. So we look forward to it.

COMMISSIONER DIAZ: We recognize the tremendous amount of expertise that already resides in the states. And I'm sure the staff intends to utilize that expertise because the Energy Bill is a big box full of little boxes all nicely wrapped. And now we are unwrapping it and sometimes we smile and sometimes we frown.

So we're trying to find out what are the details of each one of those things. But we certainly look forward to working with you. Definitely, you have the expertise. We appreciate you supporting the legislation. I think we will be able to put something together to be able to work with you in an early fashion.

COMMISSIONER JACZKO: This is a question actually for any one but I'd just address it to Mr. Bailey because you made the comment.

You said that, and this is just to educate me a little bit on some of the history here, that you don't see much change in the Agreement State programs with the NRC having this authority and yet the Agreement States have always supported or have recently supported -- I don't know what the history is there -- the NRC having or having some national thing.

Can you explain what the reason is or what you saw as the problems that were needing to be addressed.

MR. BAILEY. Yeah. I can go back many years. When we had radium that being used widespread in the United States for industrial gauging applications, the Agreement States regulated radium and gauges.

We, through the CRCPD, ended up writing the NARM guides on how these were to be evaluated and said, okay, we're not going to accept them for routine licensing unless they've been evaluated by a licensing state.

We saw companies that purposely located in NRC states so they could manufacture radium gauges, gauges containing radium without any controls. So we have always wanted, particularly radium, to be included under NRC's umbrella.

COMMISSIONER JACZKO: The reason for that is because of

these kinds of things that have come up, I think, with the general license, although maybe in a different way, that's these kind of trans-state, the domestic commerce issue. It's how the materials are moving from one state to another. Is that really the concern?

MR. BAILEY: Sure. That was one of the issues. And just as we do the sealed source and device registry now, we've always had something similar to it. But on the radium devices we didn't have. We did not have a single agency saying they ought to meet these standards even though it's common sense that a radium gauge ought to go through the same testing and the same prototype and so forth.

COMMISSIONER JACZKO: How would you describe then the current standards that the Agreement States have? Are they roughly equivalent or is there a lot of divergence among the various Agreement States?

MR. BAILEY: No. I think if you look at the Agreement States, and Paul's office can either verify or refute this, right now it's extremely difficult when you go to an Agreement State for them to tell you which are agreement materials and which aren't.

We don't break them out in any way. I mean, if somebody wants to build a gauge and they want to use radium in it or, let's say, cadmium 109 that they get from an accelerator rather than from a reactor, we would be hard pressed to tell you, and we often are hard pressed to tell you how many NARM licensees we have. Everything -- it's done the same.

We don't talk about byproduct material. We talk about radioactive material. And it really doesn't matter.

So I would assume that all Agreement States are doing it that way because it's the easiest way to do it. It's really easier than trying to separate all these things out and do their own little silos and treat them differently.

COMMISSIONER JACZKO: Thank you.

MR. FITCH: Commissioner, in the last four Commission briefings OAS and CRCPD brought up the idea to the Commissioners that we supported such NARM legislation largely because we are seeking consistency of implementation across the United States.

Now, as much as it might appear that the states don't want NRC interference, in this one area we saw that as being really and truly needed for the nation, especially with the seeming proliferation of accelerators across the nation primarily for short-lived isotopes such as fluorine 18, we felt like we needed national consistency.

MR. COLLINS: The other thing is that the consistency is there

from state to state right now for those states that do have a program because of the CRCPD's model state suggested radiation regulations. All of the states use those as their basis. So in your terms, compatibility is there from state to state already for all radioactive materials. And for the review of the sealed source and devices, essentially when NRC established that system, like Ed said, we apply it to all radioactive materials going into a device. We don't distinguish byproduct materials from those others. That consistency is there.

MR. BAILEY: If I may add. There are also things that the states have exempted particularly in the medical field. There have been some of the test kits and so forth that we have added to the bio medical waste rule for allowing them to be disposed. Those things need to be folded in. But those are all little discrete fixes that should not be difficult to do. And the states and the CRCPD have information on how they did it when they adopted it into their regulations.

We're looking forward to working with you.

COMMISSIONER DIAZ: Thank you.

COMMISSIONER LYONS: I would just echo the Chairman's thanks to all of you for supporting this legislation and perhaps add that I know HPS also played a role in encouraging this legislation. I think this should lead quite quickly to streamlining of regulations across the country. I think it's very, very positive. Looking forward to working together to make that happen.

COMMISSIONER DIAZ: And the last topic this morning.

MR. FITCH: Mr. Chairman, this is an issue that is probably very dear to my heart.

Back in October 2001 at the OAS meeting in Santa Fe, which I hosted, a resolution was put forth and passed. It was put forth by the State of Colorado by Jake Jacoby. And that was the idea that the OAS needs to look at incorporation.

The OAS itself had been in existence since the '60's, when there were the Agreement States meetings convened here in the Washington, D.C. area, when the states and the NRC felt at that time it was necessary to improve communications.

Well, the OAS had been a group that lacked a lot of structure at that time. We saw a lot of resource issues and liability issues, financial issues that necessitated incorporation. I was fortunate enough to chair that incorporation working group within the OAS to get this done.

One thing I noticed, especially when I became chair and more recently expanded to the staff, the OAS has resource issues. But beyond that the OAS has some issues about vision of who we are. For a very, very long

time now the CRCPD has led the charge as far as an organization that was greatly organized that carried an identity for the states. And I saw people who were actually in Agreement States programs that didn't know that the Organization of Agreement States existed, nor did they understand what their rights and membership were or what sort of benefits that the OAS could provide to the membership.

And one thing that came up to me is how can a person really know what they can become if they don't know or understand their personal identity? How far can they press? What can they do?

The synergy of OAS is in the fact of all its talent. There's a great deal of talent there. In many states we are health physicists, for instance. We are very committed to our profession. Many of us are certified health physicists. Many of us are members of the Health Physics Society in addition to being at the state.

So when we looked at the bylaws, we decided that who we were was, we are a professional society. We couldn't identify ourselves as being from any given state because the agreements are between the governors and the NRC. Instead, we are professionals who try to represent the interest of our states and of each other collectively.

So in the bylaws we wrote that in as our scope and as our purpose. Again, this general lack of identity is pervasive.

Without a vision the OAS would be unable to adequately organize its resources toward accomplishing the primary purpose dictated in the bylaws. We saw this as a problem with long-term health, longevity of the organization. For me when I was chair last year, I was really concerned about where the organization would be 20 years from now.

Yes, our primary relationship is with the NRC. But how can we discharge that relationship with the NRC if we can't organize ourselves and pull our resources together? The question came up as what is OAS independent of the NRC? I know there was a lot of disagreement on the OAS executive board about this. Many people feel like we are colleagues with the NRC.

Yes, we are. We are very much colleagues. But we are something aside from the NRC. We are something, an organization that can provide value nationwide. We are an organization that can provide value to the CRCPD, to our licensees, even to special interest groups.

We can provide more to the NRC if we have a clear vision of what we're about. We can add more to our membership if we know what we are about and we can better organize.

So as past chair I also chaired the strategic planning

committee. And we were charged by Jared Thompson to develop a vision statement. That vision statement is on our web site and I would like to encourage everybody who can go on there. But our main thing is OAS is a progressive, professional society whose members and activities constitute an invaluable resource to the regulation of radioactive materials and radiation safety across the nation.

And that's how we see ourselves. That is our primary identity. We are committed to collaborative partnerships with state and Federal agencies to making this accomplishment.

When you read the vision statement, it will not say anything about NRC and this is the reason why, as we see ourselves as a professional society.

In closing I would like to change the subject somewhat. A few years ago, I remember when Dick Banghart was the Director of Office of State and Tribal Programs until the time came for his retirement. Paul Lohaus was made Director of State and Tribal Programs. I have been in an Agreement State program since 1998. I watched that transition, I have watched the work of Paul Lohaus and what he has done.

First of all Paul Lohaus is a company man. He has always been highly committed to making the NRC work. He has also been highly committed to his staff and providing his staff with the tools necessary and the support they needed to get their jobs done.

What was their job and what did Paul see? He saw that in supporting the Agreement State program. I would like to say we would like to extend to you, with Paul here, our profound appreciation to him because of the fact that he has really made the Agreement State program work. What was envisioned in 1958 and 1959 when the Agreement State program came together is best embodied in the philosophies of Paul Lohaus and what he has managed to accomplish.

So I would like to commend to him our appreciation.

COMMISSIONER DIAZ: Thank you very much. We believe that's a very proper way of saying so long to Paul, being recognized by those that he deals with every day and try to reconcile with. On behalf of the Commission, I thank you for your recognition.

MR. BAILEY: Mr. Chairman, can I make one statement and it's really an invitation. The Organization of Agreement States meeting is this October in San Diego, California. And I know that some of you are going to be there. But I would encourage the Commissioners and the staff of NRC to please come to the meeting.

You're always welcome. And we really enjoy getting to interact

with the Commissioners, with the staff of NRC, and we have an excellent program put together. Barbara has done most of that work. We have an excellent site for it. And I think it will be a very enjoyable and informative meeting. And we ask you to come. Thank you.

COMMISSIONER DIAZ: Thank you very much. That is one invitation that we will seriously consider.

Do my fellow Commissioners have any additional statements?

COMMISSIONER JACZKO: I guess yes. I just want to say I appreciate all of you coming. We have a meeting this afternoon to continue some other discussions. This was my first meeting with the Agreement States and I think -- certainly I think that my fellow Commissioners have done a lot to work on the relationship with the Agreement States and with CRCPD over the last several years. And I look forward to continuing working on that and strengthening that relationship.

COMMISSIONER LYONS: Just that I view the partnership between the NRC and the states as embodied in both the CRCPD and OAS as really critical to the overall task that the nation needs accomplished. It's a very important partnership and I'm very proud to work toward that partnership with all of you.

COMMISSIONER DIAZ: Thank you very much. In the same note I just want to thank you. Thank the staff for putting the meeting together and for the work. I know we have some additional work to do this afternoon. We're looking forward to the discussions that we will have. I want to thank each one of you for coming and sharing your views and giving us your firsthand impression of the issues. We are committed to work with you. We are committed to make things happen. I know you are.

With that, unless there is anything else, we can adjourn.

MR. O'KELLE: One quick comment. As one who probably did a whole lot to hasten Paul's retirement, I wanted to express my gratitude and appreciation for everything he has done for the states and apologize for all the stuff we put him through.

COMMISSIONER DIAZ: With that we are adjourned.
(Thereupon, the hearing was adjourned.)