

UNITED STATES NUCLEAR REGULATORY COMMISSION

MEETING WITH OAS AND CRCPD

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TUESDAY, SEPTEMBER 12, 2006

9:30am - 11:30am

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The Commission convened at 9:30 a.m., Dale E. Klein, Chairman,
presiding.

NUCLEAR REGULATORY COMMISSION:

DALE E. KLEIN, CHAIRMAN

EDWARD MCGAFFIGAN, JR., COMMISSIONER

JEFFREY S. MERRIFIELD, COMMISSIONER

GREGORY B. JACZKO, COMMISSIONER

PETER B. LYONS, COMMISSIONER

PRESENTERS:

ALICE ROGERS, OAS

JARED THOMPSON, OAS

PAUL SCHMIDT, OAS

BARBARA HAMRICK, OAS

PEARCE O'KELLEY, CRCPD

DEBBIE GILLEY, CRCPD

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

CHAIRMAN KLEIN: Good morning. Let me apologize for not starting the meeting on time. Normally, I'm a stickler for meetings beginning on time and ending on time but unfortunately I was coming back from the White House this morning and there was an this minor thing called an overturned tractor on the highway that seemed to sort of cause delays.

Let me thank you for coming today. What we're going to hear about today is we're going to meet with the Organization of Agreement States and the Conference of Radiation Control Program Directors. As you probably have heard from my previous statement, that this is really an important program for the NRC, and we look forward to hearing from you and having a dialogue today. We really value our relationship that we have with both organizations. It really let us do our job better for the American people. What I'd like to do is see if my Commissioners have any opening comments to make?

With that, I think we'll turn the program over to the Organization of Agreement States. Barbara?

MS. HAMRICK: Thank you. The Organization Of Agreement States Executive Board and the entire OAS membership would like to thank you for inviting us here today. This has been a very interesting year and has included some unprecedented challenges to both the States and to the NRC. For the States, the challenge of imposing and enforcing increased controls has been a unique experience. Due to the close nexus of these health and safety concerns to national security concerns, there was as you are well aware, an accelerated implementation period which challenged all the Agreement States to find new and creative ways to expedite the regulatory processes. I believe that all the

Agreement States have met this challenge and look forward to the inclusion of the increased controls requirements in future regulation. For the NRC, the challenge of developing the rulemaking to include the regulation of naturally occurring and accelerator produced radioactive material was also reasonably unique, in that this was the first new material to be added to the Atomic Energy Act since the modification of that Act to include mill tailings materials in the definition of by-product material in 1978.

The Agreement States appreciate the early and continuing input that we have been afforded in these efforts and look forward to working with the new and improved NRC after the reorganization is implemented in October. Thank you again for providing this opportunity.

MR. O'KELLEY: I guess it's my turn again. To reiterate Barbara's comment, we appreciate you guys allowing us to have the opportunity to meet with you. I know most of you here are tired of seeing me since I been here for five years in a row and this will probably be my last time. But I do want to again extend tremendous thanks for all you have done. You have expressed great interest in the Agreement State programs. You have helped us to become more involved with NRC and policymaking, decisionmaking, rulemaking and we're very appreciative of that. We appreciate the support you showed in our participation on the Chairman's Task Force and I just can't thank you enough for including us and very appreciative.

As far CRCPD goes, we are potentially also facing a reorganization of sorts. We are currently evaluating and looking into what options are for the continued operations and improvement of the organizations. We have a committee formed to look at either keeping things the way they are, moving the office to a different location and or even a third or fourth option on how the organizations is going so be run. We are currently facing some very tight budgetary times. Hopefully, we will be able to continue to provide the same products and great service to our State members as we always have and again,

thank you for allowing us to be here.

CHAIRMAN KLEIN: I was going to say that you have space issues in addition to what the NRC has.

MR. O'KELLEY: Right.

CHAIRMAN KLEIN: Barbara, do you want to proceed with your program?

MS. HAMRICK: Yes, I'd like to start by discussing the comments that have been provided to the NRC on the published proposed NARM rulemaking. Although I know that you're well aware of the concerns that the States have regarding the implementation of the Health and Safety designation with respect to the definitions that have been amended by or that arise from the Energy Policy Act, I think it is worth reiterating those concerns briefly and revisiting a suggestion that the OAS Executive Board made in a Commission briefing on May 15th of this year. Specifically, there is concern that the adequately designation of Health and Safety may result in pressure to amend longstanding definitions in State statute and regulation. We appreciate the comments the Commission included in SRM-06-0069 approving the staff's recommendation to publish the proposed rule. Those comments stated that the staff should be flexible when working with the States, the OAS and the CRCPD to develop IMPEP evaluation guidelines that meet the NRC's needs for making Health and Safety judgments while accommodating existing State programs and needs.

We appreciate the direction to provide flexibility but feel as we did at the May 15th briefing that somewhat stronger language is needed. And that that language should become a part of the Statements of Consideration in the final published rule. The suggested language which was provided May 15th and also in our written comments dated August 23, 2006 essentially provide that adequacy with respect to the definition should be initially determined based upon the governor's certification that a program is adequate and should subsequently be determined by ensuring that the State has the

statutory and regulatory authority in place to regulate the new by-product material without regard to the specific language that grants that authority.

As stated, this suggestion was provided in the May 15th meeting but the timing was such that consideration could not be given to including the suggestion in the published proposed rule. We hope the suggestion will now be considered and that the final rule can address the continuing concerns of the States in this matter.

As I believe you know, support, for that pathway to resolution came from the vast majority of the Agreement States. The States believe that this is a reasonable solution that preserves both the NRC's oversight role and the spirit and the letter of the Energy Policy Act which calls for the NRC to the maximum extent practicable to cooperate with the States and use model State standards.

I'd like to move on to the next topic related to the NARM rulemaking which is the governor's certifications unless you have questions specifically on that issue I just discussed.

CHAIRMAN KLEIN: I think what we will probably do, we will go through all the presentations and we will try to have our questions at the end.

MS. HAMRICK: Thank you, Chairman. The second issue related to the NARM rulemaking has to do with the governor's certifications and the transition plan. As we are all aware, there is some rather difficult language in the Energy Policy Act relating to the date of certification by the governors of those States intending to continue regulating NARM. The NRC staff and State representatives have worked very hard to find avenues to accommodate the letter and spirit of the law and I think they have done an admirable job. There is still a residual concern, however, that the window of opportunity for the States to provide certification be as large as possible a window.

During last year's briefing, I discussed the many difficulties that States face due to the generally small statute of the State radiation control programs among other

State programs and to give you some perspective, California employs 300,000 people. The Health and Human Services Agency which is our cabinet level connection to our governor, employs 35,000 people. Below that, the Department of Health Services employs about 5,000 persons and within that Department, resides the Radiologic Health Branch with about 150 employees and at least half of those perform work that is related to machine produced radiation.

I would like to suggest that our honorable Governors at any given time will have on their agenda, a considerable number of very significant concerns affecting far more persons in very serious ways and then will be affected by the NARM rulemaking. Thus, it is important to recognize the required certifications may take time and the more time a State program has to obtain the governor's certification, the better the chance that a State will in fact, certify.

In particular, I think the Commissioners should be aware and consider the fact that 27 of our 34 Agreement States will be facing gubernatorial elections this November and I don't think I have to go into the details regarding the implications of these elections with respect to the governor's certifications. I simply want to make sure that this fact is considered in your consideration of the publication of the transition plan. I'd also like to point out the Energy Policy Act does not call for nor is it necessary for the transition plan to be published coincidence with the NARM rulemaking. It appears that the NRC could publish the NARM rulemaking and approve but delay the publication of the transition plan until there has been a response from each of the States. In this way the States will not only have the opportunity to ensure that the Governors are properly briefed on all the issues related to the certification but that the rulemaking itself which may affect the Governor's decision is already settled business. That's all the remarks I have on the NARM rulemaking.

COMMISSIONER MERRIFIELD: I'm sorry, just as a point of clarification,

otherwise, it's going to get lost. What is it that OAS is suggesting for transition? What is the timing?

MS. HAMRICK: What we are suggesting is that the rulemaking clearly has a date of publication of February 7th, 2007. We're suggesting that the transition plan be approved at the earliest date possible even within a month or so but that it not be published in the Federal Register until after the rulemaking date, and perhaps even extending it several months after the rulemaking is published.

COMMISSIONER MERRIFIELD: So you're saying April time frame, something along those lines.

MS. HAMRICK: April, May, June.

MR. O'KELLEY: What year?

COMMISSIONER MERRIFIELD: Okay, thanks.

MS. HAMRICK: Next, Pearce is going to talk about the State's interaction with other Federal agencies.

I'm sorry, Jared is going to talk. Thank you, Pearce -- on the National Source Tracking System. I apologize.

MR. THOMPSON. Good morning. The National Source Tracking System offers the ability to strengthen high activity, high risk source accountability especially for Category 1 and 2 sources. The current NRC version is most consistent with the IAEA Code of Conduct guidance and the NRC/DOE paper on source security. But this tracking system must not be overly intrusive or burdensome to the regulated community nor the State radiation control programs. As a member of the NSTS Steering Committee, I supported the change and basis for the rulemaking to Health and Safety. Perhaps I was overcome by previous successes or just naive. There is the unprecedented success in the implementation of the increased controls because the Agreement States readily responded with the willingness and ability to contribute to nationwide increased security of

radioactive material.

Source accountability is a basic Health and Safety function and, arguably, the NSTS does not obviously increase security of radioactive material. But I failed to recognize the reality of the impact on the basis change on several Agreement State programs because of the number of Category 1 and 2 source manufacturers and distributors. This has resulted in very diverse concerns among Agreement States, particularly the five States that did not support the basis change.

I would like to discuss SEC Y Paper 06-0094 concerning the possible enhanced controls for Category 3 sources. The OAS board does not support expanding the NSTS to include Category 3 sources or less. As a member of the steering committee, I oppose the inclusion of any sources less than Category 2. This was widely discussed very early during the developmental stages of the NSTS rulemaking almost four years ago and it just does not seem to want to go away. This opposition to the expansion of the NSTS to include Category 3 sources rests on the question, what represents a risk to the Common Defense and Security, and Health and Safety from sources less than Category 2.

To my knowledge, there has been no risk assessment or analysis to justify including less than Category 2 sources in the NSTS. The collection of data as outlined as an option in the SECY Paper regarding the number of Category 3 sources will not provide sufficient data to make a risk decision regarding the burden that may result from including these sources in the National Source Tracking System.

Finally, fewer States may be less likely to support the National Source Tracking System basis change to Health and Safety because the option discussed in the SECY Paper. The option was not available during the comment period for the basis change in the NSTS rulemaking. The NRC seems to have very limited buy-in on the National Source Tracking System basis change among the States, and now the NRC may

include an option for Category 3 sources that will have an impact on these Agreement State programs.

The thing that's most problematic with this is the States have not had a chance to comment on the inclusion of Category 3 sources within the rulemaking suggestions made in option 2 of the SECY Paper.

COMMISSIONER McGAFFIGAN: Mr. Chairman, just a clarification there. I am sure -- I think I was away for part of the period but I am sure that the Commission asked for comment on expanding to Category 3 sources during that rulemaking. It may well be that many of the States objected. All of our Federal partners urged us to go to at least Category 3 sources. So that's just as a factual matter, my recollection of the rulemaking record was that EPA, DHS, DOE, and perhaps other Federal agencies all urged us to go to Category 3 or lower.

And we specifically asked for comment on it and then, some States presumably, said, you know, no. But that's the record on which the unanimous Commission decided to go to Category 3.

MR. THOMPSON: I understand there really has not been a decision, if that's correct. You're looking more at data collection to determine if that's what you want to do.

COMMISSIONER McGAFFIGAN: If reading the SRM fairly, we're leaning pretty strongly toward going to Category 3 sources.

COMMISSIONER LYONS: But at the moment, the staff is directed to come up with a plan for a trend for a possible transition 3 years from now. I think there are still steps --

COMMISSIONER MCGAFFIGAN: Directed to come up with a rulemaking. So we sort of directed them to come up with a proposed rule, I think. I don't have the SRM in front of me.

COMMISSIONER JACKZO: I think the language was to have Category 3

included in National Source Tracking within 3 years but it's not included as of this rulemaking.

MR. THOMPSON: The rulemaking right now you know, it's strictly for Category 1 and Category 2 sources.

COMMISSIONER McGAFFIGAN: Your problem is with the SRM that basically tells the staff to come back with a proposed rule after doing a data collection, down to Category 3.5 sources, to come back with a rulemaking so that within 3 years we can be at Category 3.

MR. THOMPSON: There is some concern about, that Commissioner McGaffigan: There is some concern among some of the States, particularly when you start dealing with some of the States that have some of the larger manufacturers, you're going to impact them not only with Category 1 and 2 but you're also going to impact them with Category 3. The basic change gives the States the enforcement capability. They have not had a chance to comment on whether they want to expand their enforcement capabilities to take on those additional duties.

COMMISSIONER McGAFFIGAN: I understand your comment, I just wanted to make sure that you understood the record of the previous rulemaking was --

COMMISSIONER JACKZO: Chairman, perhaps Karen, you could clarify, I believe there was specifically a question in the last rulemaking that asked about for comment on the inclusion of Category 3.

MS. CYR: That's my recollection as well. And the one that we did last summer that --

COMMISSIONER JACKZO: -- that specifically asked for comments on Category 3 inclusion.

CHAIRMAN KLEIN: So we're still getting that information in?

KAREN: Well, the Commission in this SRM asked the staff to develop -- to

go out and collect certain information, was it Category 3.5, or whatever –

COMMISSIONER McGAFFIGAN: A factor of 10 below Category 3.

MS CYR: – and looked to go toward a Category 3 but then, you also -- I think your concern as I understand is because if you couple that with the change to Health and Safety, then it expands the burden and the role of the States.

COMMISSIONER McGAFFIGAN: In inspection and enforcement, right.

MS. HAMRICK: Now, we will hear from Pearce, O'Kelley, Chair of the CRCPD on the interaction of our State agencies with other Federal agencies.

MR. O'KELLY: Yeah and while I've got 2 seconds, on the Category 3's, I think we were -- a lot of us were led to believe that the option was to evaluate the need to go to Category 3, as opposed to a direction to absolutely do so. And I may be incorrect. The topic of this one is joint interaction with other Federal agencies. First, I would like to thank the folks at NRC, State and Tribal Programs people and NSIR, who have done a great job in trying to get us involved with other Federal Government agencies specifically, the Department of Homeland Security, their DNDO office, as well as several others to ensure that these agencies were aware of the role of the States in the regulation of radioactive materials as well as the role of the States in response to any incidents involving radioactive materials.

We have seen in the last year or less where the impact on State programs from initiatives that are set forth by DHS and DNDO, Customs has a potential for a major impact on State programs, specifically, with regard to providing and updating and maintaining a list of licensees to both Customs and DNDO for them to use in their ALARA resolution in determining whether shipment is a valid shipment, whether a license is a valid license. And that the recipient is indeed prepared and ready, and those of the shipment.

We have had some major growing pains in dealing with them. There are a lot of issues that are still yet to be resolved. The States are constantly being requested

from various Federal agencies and/or their contractors to provide them with information concerning our licenses, our license database. The States do not know whether these are legitimate requests, whether these requests have been approved or even that NRC is even aware of them. In some cases, I don't know that they were. In some cases, I think the people at DHS and DNDO were not necessarily aware that one office was doing one thing or one contractor was out asking for information. It's kind of put the States between a rock and a hard place. We want to do our part and we want to comply. We want to help but at the same time, we want to make sure that just as you do that, our licensee database and sensitive information does not get into the wrong hands, that it is whoever we are providing these to have a means and a mechanism for ensuring the security of that information.

Several of us have got information or requests from the Department of Transportation requesting our licensee database so they can come do DOT inspections on shipments. We have passed those issues back through and notified NRC and STP and they are also looking at that. What we do ask is that NRC find a mechanism to serve as a clearinghouse for these requests from other Federal agencies and then, relay that information to the States so that we know that it's a legitimate request. That when we get it, we know that there has been thought put into the process on securing this information. That there's been thought put into the process of the impact of continuing to provide this information in various forms. That's one of the issues with DNDO right now, is what form of license information do they want?

They seem to think that they can handle almost any electronic means of providing that information but a lot of us do not necessarily have that information in electronic format at the current time. We have various databases and I know in South Carolina, our database does not necessarily, at the current time, contain all the information that they would need, Customs would need and/or DNDO to ensure that

licenses are accurate and authorized to receive that material.

That being said, we're currently waiting on the chance -- waiting on what's going to be required so we can develop the database to be able to provide it in that format. We would request that you consider looking at the possibility of forming a NRC, DHS and State working group to address these issues and let us continue to be involved in that because as you know, the impacts are going to be greater on the States than the NRC when it's looking to answering these alarm resolutions. Also, as one other thing, as time is getting low, is that the issue on what's going to happen after we find it. There's been some issues in several States where Customs has discovered some material coming in. Whether or not who's going to act on that to allow it to come in or not, I think there's been some discussions back and forth where the NRC says, no, the States, you make that call and then the States say, well, that's going all across the country, it's coming in as an import, NRC, you make the call. So there are some issues that we still need to address and they could potentially have some significant impact not only on the States but also on the NRC regions. Thank you.

MS. HAMRICK: Did you want to ask me any questions?

Next we're going to hear from Debbie Gilley. Debbie is the Chair elect of the CRCPD and she is going to discuss the historical relationship and current relationship of the NRC and States in order to give us some perspective for the following discussions by Alice and Pearce.

MS. GILLEY: Good morning, thank you for this opportunity. It is my first opportunity to meet several of the new Commissioners and I appreciate having met the other ones at some other informal meetings in the past. On behalf of the Conference of Radiation Control Program Directors, I would like that to thank you for this opportunity to address common interests and concerns we believe are shared by you, your staff and our members.

Our 40 plus years of co-regulatory responsibilities have been a series of opportunities that have been successful and challenging.

It is perceived that the successes of this relationship can be directly attributed to the support States have received from you, the Commissioners. With this observation, I would like to highlight some issues for your consideration. First, the number of Agreement States and their participation in regulatory processes are growing. Thirty-four Agreement States are now responsible for over 80 percent of the license activity of the United States, including my home state, Florida, whose program is larger than some regional NRC offices.

We have seen more interest in Agreement State status in the past 3 years and especially in the last year with the passage of the Energy Policy Act. Non-agreement States who have regulated non-accelerated produced material for more than 20 years are now faced with the loss of licensor status of this material and out of economic necessities must go forth with working toward Agreement State status. The trend is definitely to have more agreement states. If Pennsylvania, New Jersey and Virginia are accepted as Agreement States, we will have 37 Agreement States, 74 percent of all States and an increase to almost 90 percent of the radioactive materials licenses will be in these Agreement State programs. It is now and will be more important working with the States for a unified national material program. This concept preceded the tragedy of September 11th. Yesterday's remembrance of this event will forever alter the nation's perception on security and a safe place to live.

This concept of the National Materials Program is the blueprint for working with other Federal agencies that have focused their attention on possession and use of radioactive material. As a Federal agency actively involved in Federal oversight, NRC is the obvious natural leader who can improve the relationships between law enforcement, homeland security and emergency response at the Federal level, and open opportunities

for State participation.

Coordinating these activities needs to be established and exercised prior to a real emergency if we are to prevent the tragedies that we saw with the hurricane season of last year. Because States are closer in proximity to the physical location of the area of interest, they will be the first to respond. We have established local relationships due to the local emergency planning committees in most metropolitan locations. We offer this as a service, not because it is a requirement, because it is the correct thing to do. We would be remiss if we were to inform Customs that our responsibilities and jurisdictions ends at the gates of U.S. ports and international airports.

Other such initiatives to make our homeland safe included the increased controls and security inspections and National Source Tracking. We have seen directors from many Federal agencies trying to get a grip on what we as a nation can do to prevent another attack, and especially an attack with a nuclear device or explosions that contain nuclear material. The National Source Tracking Initiative demonstrates the need to identify key State personnel and share inventory of sources and provide States with mechanisms to implement to satisfy security, health and safety needs. Since this is a security, health and safety interest, coordination will need to be performed by NRC with the assistance from the States.

Efforts should be made to continue to work side by side with the States to keep this information up-to-date. A mechanism that might be useful to accomplish some of these goals is the awarding of grants to States to assist NRC in these initiatives. Security inspections in making our high risk licensees reduce accessibility to material is paramount if we are to deter malicious intent with radioactive materials. The expectation of staff is somewhat unrealistic in smaller States with large geographical locations and only one qualified inspector.

Consideration should be given to the types of licenses, geographic

distribution of these licenses and succession planning when adding additional regulatory oversight on State programs. Early participation by States in the decision-making process will encourage a more cooperative spirit. Consistency in these inspections, whether performed by States or the NRC, should be a priority and supported by web-based training that is accessible to State and Federal inspectors. There will be other security related initiatives that NRC will need to share with States. Hopefully, the initial phase will include State personnel in a cooperative manner. Building consensus at the developmental stage is key to cooperation and success.

Failure of this cooperation leads to unnecessary activities such as petitions for rulemaking. Prior to 2002, only one State had filed a petition for rulemaking. Today, there are 2 petitions on the general license issues. These are in response to unilateral decision-making on the compatibility designation. Petitions for rulemaking is not the answer for solving our problems. We need to work with methods to keep NRC from being in a reaction mode by increasing our initiatives for State and Federal cooperation.

The reorganization of NRC came as a surprise to many States. For the past 12 years, we have had the pleasure to direct our concerns to one agency and one or two key individuals with knowledge about Agreement States and how they operate. Trusting relationships have been developed. As in any organization, changes need to be made to respond to whatever changes in the environment and no doubt, the environment we are all working in has changed.

We hope that the positive aspects of the past organizational structure will be preserved, that we will have one individual who is a coordinator for State and Tribal activities, who has the authority and responsibility to make decisions on behalf of NRC and follow the Commission's leadership. This would of course need to be someone in a leadership role within NRC.

In closing, as Chair Elect of the CRCPD, I look forward to working with you

and your staff to continue to improve the communications between NRC, all States and work toward eliminating unilateral decisions that have had impacts on NRC and State relationships by providing talented and qualified CRCPD members to assist in working with NRC for solutions to problems that will impact the States by supporting initiatives that will allow NRC to conduct business with States in a more transparent environment.

I extend my commitment to build a trusting environment between CRCPD and the Commissioners to ensure that the CRCPD meets our goal to promote consistency in addressing and resolving radiation issues, to encourage high standards of radiation protection programs and to provide leadership in radiation safety and education. Thank you.

MS. HAMRICK: Thank you Debbie. And Alice Rogers is the secretary of the OAS and she's going to be discussing one of the ways that we do structure the relationship between the NRC and States. That is a very important Management Directive, 5.3.

MS. ROGERS: Thank you Barbara and thank you Commissioners for your time and your consideration. An important NRC document which helps defined the relationships with the OAS and CRCPD and NRC is Management Directive 5.3 which is entitled, "Agreement State Participation in Working Groups".

This document was first approved in 1998 after the Agreement States and the NRC realized that formalization of each other's roles and rules and policy development would be beneficial to each. Such items as working group membership, charter development, role and makeup of steering committees and approval of final work products are addressed in MD 5.3. And the document has been of great use to the Agreement States. MD 5.3 is currently being reviewed by the working group on working groups to more clearly reflect --

COMMISSIONER McGAFFIGAN: Is there a sub-group --

MS. HAMRICK: It's actually also known as the working group squared.

MS. GILLEY: – to more clearly reflect the roles of working groups in which NRC and Agreement States are co-chairs as opposed to those in which Agreement States are advisory to NRC efforts.

Mr. O'Kelley and I were fortunate to have served on the working group on working groups. The draft revisions were very near completion when the Office of State and Tribal Programs reorganization was announced. And although we recognize that the new NRC organizational entities should -- oh, wait a minute, we recognized the new NRC organizations entity should be incorporated into the ongoing revisions, but we are concerned that the reorganization efforts may delay the final issuance of the document. The State's relationship with the State and Tribal Programs office has evolved in a very positive manner over the ten years and actually, over more than that. And the OAS executive board believes that this is due largely to a better understanding of our roles in the regulatory process guided mostly by the structure provided by MD 5.3. So, we encourage the Commission to ensure that the revisions to this document are completed in a timely manner and that our new NRC partners from offices outside the State and tribal Programs are provided information regarding the importance of this document to the NRC State relationship so we can continue to serve NRC State relationships within the new organization. Thank you very much.

MS. HAMRICK: Thank you Alice. And Pearce is going to speak briefly about the Pilot 2 Project which is part of the National Materials Program. Pilot 2 dealt with the radiographer certification issue.

MR. O'KELLEY: And I'm not going to take a whole lot of time on this. I just want to make sure that the Commissioners understand the position CRCPD is taking with regard to one specific issue relative to the certification of industrial radiographers.

As you know or may know, that CRCPD for several -- many years now has run a

certification program for radiographers. Basically, the program was developed and run by the great state of the Texas. And the test and certification of programs that utilized this test were done through the auspices of CRCPD. This has been done and been very effective for many years now. When working with Pilot 2 and trying to finalize the definite process, we became aware that it was the intent of NRC to make the State operation of the certification program an item that would be reviewable under IMPEP.

While I don't think there is any State that has any major concerns that they are not going to be doing things the right ways, the concern is that we been doing this for years without review. The concern is a consistency on the part of NRC to look at all certifying agencies, organizations and boards that are in a equivalent and equal manner. The issue where boards and organizations certifying medical practitioners, authorized users, RSOs, medical physicists do not undergo four years IMPEP inspections of their program.

Likewise, the other industrial groups that will be approved for performing certification of radiographers, you are looking at putting in a whole new process. For now, you're going to be doing an IMPEP review on an organization that you don't license. So -- excuse me -- it really has little direct role with the NRC, and typically has been part of the IMPEP process. That being said, we understand that the staff is currently reviewing options that are available looking at legal obstacles, obligations, so forth. We would ask that if there are identified, legal obstacles, we try to find a way to overcome them or whatever they may be, work with it. We are more than happy to work with you on any mechanism possible. We just ask for consistency in treating all the certifying organizations the same. Thank you.

MS. HAMRICK: Thank you, Pearce. I'm going to just speak briefly about the reorganization and in fact, Debbie Gilley really made the two points that I wanted to make. So I will be very short here. I think it's not news that the decision of the Commission to reorganize and merge aspects of the Office of Nuclear Materials Safety and Safeguards and the Office of State and Tribal Programs came as a surprise to all of the States. There seems to be some apparent urgency to the reorganization which gave a -- there is a lack of time up-front for the States to consider what this might mean to them. But the OAS and CRCPD Boards do appreciate the notice that was provided to us and to all the States in this regard. We understand that this is wholly the business of the NRC and we would just like the Commission to consider the impact that the reorganization may have upon the States and the concerns that the States may have. First, this was a point mentioned by Debbie. We would like to preserve the tradition, the established practice of having a single primary contact for all Agreement State concerns. That is not to say that we do not want to work with the division directors. We certainly do.

We appreciate the fact that many of the appointments in the new organization are persons with experience working with the States and we're confident that working with them, we will continue to improve our relationships but we would like to preserve one primary contact if there are issues that cross divisional lines. And we also want to convey that we hope that the philosophy, the management philosophy of the State and Tribal Programs under Paul Lohaus and now, under the current director, Janet Schlueter, is preserved in to the new organizations so that our relationships do continue to improve. That's all I have to say on that.

Pearce, did you want to comment on the reorganization?

MR. O'KELLEY: Well, you put me on the agenda so I guess I need to. First, I would like to say -- give a great deal of thanks to the Commission, to the Executive Director's Office, to State and Tribal Programs for allowing both Barbara and I to have a

significant input in responding to the proposed reorganization.

I think our input was valued. I think it was desired. And I want to personally thank all of them because I do think a lot of our concerns and issues have been subsequently addressed in the revisions that have evolved over the last several months and I really appreciate, (a) the opportunity and, (b) the inclusion of those ideas and thoughts. That being said, I would like to request or urge that we have continued involvement in this and that a mechanism be found to allow the States to have valuable and meaningful comment on the evaluation of how this reorganization is going, because I am fairly sure that NRC will have an evaluation process to see where things need to be tweaked here and tweaked there.

We very much appreciate being a part of that and any mechanism that can be done in a working group, however it can be done. We just ask that we also be continued to be allowed to have some input in the evaluation in case there are areas we need to make some minor adjustments. Thank you.

MS. HAMRICK: Thank you, Pearce. Paul Schmidt from the State of Wisconsin is our Chair-Elect for the Organization of Agreement States and he's going to talk about the issue of bringing new Agreement States into the fold.

MR. SCHMIDT. Thank you, Barbara. I also appreciate the opportunity to be here today and to discuss the potential for new agreements and new Agreement States. As you are all aware and it was mentioned briefly earlier, the Energy Policy Act of 2005 gave NRC authority over discreet radium sources and accelerated produced radioactive materials that have been traditionally regulated by the States. Now, this transfer of authority as it were, provides a new impetus for the remaining non-Agreement States to evaluate the benefits of becoming an Agreement State with the NRC. Now, as the incoming Chair of the OAS, I would also like to see 50 Agreement States.

However, as I learned first around from my state's experience pursuing and

ultimately obtaining an agreement, there are a number of challenges that each State must overcome in order to declare formal intent, develop the necessary regulatory program, realize an agreement and becoming an operational Agreement State. And my broader experience tells me this can vary obviously by State. Some of these challenges include and this is by no means an inclusive list, obtaining information on the Agreement State process and program development details, funding the necessary training that the staff need to obtain, and obtaining permission, literally for out-of-state travel for training and conferences as well as ongoing training. Some States do have travel restrictions that make participation and out-of-state activities by multiple staff, especially, very, very difficult.

So the question is, what can be done to help reduce these challenges, address these challenges and encourage non-Agreement States to pursue an agreement? From the information standpoint, a number of information sources available continue to use the NRC website, good source of information, organizations such as OAS and CRCPD, conferences in other venues to provide useful and timely research information to States may be interested in pursuing an agreement. Just as an example, during the 2006 CRCPD meeting, OAS sponsored a special interest meeting in collaboration with NRC to educate States on the impact of the Energy Policy Act. As part of this meeting, we provided a list of web sites containing items useful to a non-Agreement State, things like this is what a final agreement application looks like that happen to be on the NRC website. In addition, OAS extended an invitation to all the non-Agreement States to attend the 2006 OAS meeting later on this month to gain an understanding of the issues related to the agreement, what an Agreement State is all about. And since I am involved in developing that meeting, there are a number of non-Agreement States I understand that have registered to attend the OAS meeting later on this month.

From the training standpoint, this is one of the most significant issues to any

State considering an agreement. Basically, how does the State fund initial and continuing training for staff that is needed to realized an agreement. From the travel standpoint, this is definitely related to the previous one. As I said, some States have difficulty obtaining permission literally for out-of-state trips especially for multiple staff for the same event.

Since much of the formal Agreement State training tends to be out-of-state, in Tennessee or Texas or wherever it may be, and it tends to be only offered a few times each year. This can become an issue, obviously. We encourage the NRC to consider increased use of alternative methods of providing training, just as an example by including use of new technology, regional course offerings, hold course in specific host States that can help limit out-of-state travel. This has been done in the past and can work very well. Although travel and training are larger issues than we have time to discuss today, the OAS would like to explore with the NRC some possible methods to address them.

In conclusion, the OAS would like to work with the NRC to identify further impediments or challenges to States pursuing an agreement, and work to address those challenges as much as is possible. And this can help provide encouragement to those States that may be considering an agreement. Thank you very much.

MS. HAMRICK: Thank you Paul. And just in closing, I want to say that this has been a very challenging year. It's been a very interesting year and I think next year will be just as interesting with the governor's certifications, the implementation of the reorganization, the ongoing efforts to work with our Federal partners in the Department of Homeland Security. But these challenges will be faced by our new Chair, Paul Schmidt, and that will be happening in just 16 days, I'm pleased to announce, not that I'm counting.

I want to say thank you to you, Chairman and to all Commissioners and to the entire NRC staff. It 's been a pleasure working with every one as Chair of the organization this year, and I look forward to continuing to work with everyone as Past Chair and thank you again for having us here today.

CHAIRMAN KLEIN: Well, thank you Barbara and all the panelists for making the comments. Not that anyone was counting, but this is my 2 months and 12 days as being Chairman of NRC and so it's a pleasure to be with you all. As Alice knows, from my former life, as Chairman of the Texas Radiation Advisory Board, I'm a very strong supporter of the Agreement States and that concept, and certainly, the CRCPD's involvement as well. If you look at the job that you all do, if you didn't do that, the NRC staff would have to be much, much larger than it is. So you all provide a very valuable function.

As those of you that were involved in the Agreement States program, you probably know of the involvement of Greta Dicus initially through the State of Arkansas and through that whole program and as a Commissioner of the NRC. And I would like to comment that we all were really saddened by her sudden death and the contributions that she made both in the State of Arkansas' Agreement State Program and NRC was really admirable and we all miss her participation in those activities.

As you might know, the NRC is very formal in the way it conducts its business including the question and answer period. And so I have learned that the way we will proceed on this one is that Pete will go first and then I will go and then, Ed and then Jeff and then, Greg. So we have a very formal process. And while I have some great questions, I will defer those to my colleague, Pete.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I would like to just say a word about Greta, as well. I had the opportunity to serve with her for over 7 years here on the Commission. She had great service to the nation here. She had great service to the nation previously in her role in the Arkansas program and in the OAS leadership, CRCPD leadership too -- and she will be missed. She was a friend of all of you as we can well imagine and you know, I'm sure my colleague, Jeff Merrifield who had the pleasure of serving with her for -- in fact, getting paired with her the first time he became a

Commissioner, and represented us at the funeral. You might want to say a word at this point.

CHAIRMAN KLEIN: One thing I would like to say, the NRC did send a delegation down to the funeral services and Jeff headed that up.

COMMISSIONER MERRIFIELD. I think both Dale and Ed have articulately spoken about our service with Greta. I had the honor of serving with her for five years during her last term. And she and I indeed were paired up in moving forward with her nomination and mine at the same time in October of 1998. Greta was always a champion of these issues. Clearly, this was the meeting that she looked forward to the most during any given year and I think clearly the interest of the Commission in focusing on these issues associated with the States was clearly a driving force. That clearly was the effort that Greta had in that regard.

In terms of last week, I was honored to head the delegation. Marty Virgilio, our Deputy Executive Director, and Tom Hiltz, who was a member of her staff also attended the services in Hot Springs, though I did have a chance to see Jared and he had a team of folks who obviously were carrying the hats of both OAS and CRCPD and recognizing her service to the country.

CHAIRMAN KLEIN: Thanks. Pete?

COMMISSIONER LYONS: Well, let me start with adding to the comments that I think our Chairman already made to thank you, the leaders of OAS and CRCPD for your insights today. I think you have presented some very interesting suggestions and very good ideas that we need to be carefully considering. I'm also looking forward to continuing to work with you in your leadership roles as we face, I'm sure, a continuing set of challenges looking into the future. And as Barbara is looking forward to 16 days, I will be joining you in about 16 days in Mobile, Alabama and that will still be another opportunity to hear the insights from your leadership and help Barbara pass the baton

pole.

It is probably also appropriate, Pearce since you mentioned this might be the last time you would be joining us here. I hope we do have many more opportunities to interact but I very much appreciated your role, your leadership, your insights and well, thank you very much.

MR. O'KELLY: Thanks for the opportunity and if something happens to Debbie or a Chair Elect next year, I may have to come back but, I'm not counting on it.

COMMISSIONER LYONS. Let me turn briefly to the reorganization. Debbie, I think you were the first one to comment and then, Alice and Barbara also referred to the importance of preserving the positive aspects of the current organization. And I very, very much agree with you. But I also am one of those who strongly supports the reorganization as being an opportunity to further increase the leverage that the Agreement States, that all the States can have in helping the NRC shape important policy issues. So I believe the reorganization can be very positive and it's up to you, to us, to work to make it very positive.

I view that reorganization as only increasing visibility of the States and Tribal programs in terms of their importance within the NRC. And as several of you pointed out, the increasing number of Agreement States or the probably increase in Agreement States really in my mind, really does mean that the States are becoming more and more the National Materials Program as several of you indicated. Pearce indicated the importance of providing evaluative mechanisms for this change. I very much agree with that and I hope that staff builds in opportunities for that evaluation. But one that I particularly wanted to suggest is that as a minimum at least, there will be a similar meeting next year and I hope that discussion of the reorganization's pros and cons, lessons learned, areas of improvement can all be a part of our discussion at about this time next year.

Turning to Barbara, your comments on NARM, I think personally, I think you

made a very good suggestion that the staff look carefully at the possibility of staggering the implementation dates -- or the implementation date and the rulemaking date. If that is legally possible, that does seem like a very positive suggestion. What I'd also note that I think the Commission has been quite specific in asking that the staff be very flexible in their implementation of NARM where I believe very sensitive to the fact that this is a challenge for you, it is a challenge for us. We want to get through that challenge in a way that minimizes the pain for all of us and moves ahead to the positive aspects that I think overall the changes in NARM will give us. So I hope you see that flexibility.

MS. HAMRICK: Thank you. We absolutely do see that flexibility and it's been very helpful for the States to be working -- for all of us to be working through this together. And the suggestion on the staggering -- I agree, you obviously have to see if that is legally possible. I think that it is and all that's asking for is to provide the broadest possible times range for everybody to be able to provide their certification.

COMMISSIONER LYONS: A couple of comments I would like to make on the points that Jared, you made. You referenced the concern that many States have with the Category 3 inclusion. In my own mind and I have said this at other meetings of OAS and CRCPD, it's going to be very hard to talk me out of including Category 3.

I think that there are a number of forces that are going to continue to increase the importance of including Category 3, primarily from the the aggregation perspective. But I also very much will be looking forward to whatever suggestions the States can provide as to how to minimize whatever pain goes along with that. But, again, even though I have heard this concern from you and other State members a number of times, at least speaking personally, it's going to be hard to convince me that we have much of an alternative other than to move eventually and I'm open to when that may be, but eventually to Category 3.

At the same time, I believe and I believe the States have concurred that

moving very expeditiously to Category 1 and 2 is absolutely essential and that certainly is where the current focus is. We got to get that done. We got to get that right and then, move ahead again in my view to look towards Category 3. But there will be a lot of opportunity for discussion and perhaps pros and cons as this moves ahead over a period of a number of years.

MR. THOMPSON: Let me make a small addition to what you're saying: You're right, States do support the tracking system for Category 1 and 2 sources. I think it's just the way the timing issue with regard to the option of the Category 3 rulemaking. That will happen some time in the future because States have bought into the notion of the basis change for Health and Safety. They are accepting that for the Category 1 and 2 sources. There may be some reluctance to accept Category 3 sources which will be coming at a later date, kind of pitched to them unexpectedly. There is some concern -- and while it's not exactly the same, you have some very strong similarities here to the GL rule. What happened with the GL rule. There are just some similarities and I just hope that there's a way we can avoid that.

COMMISSIONER LYONS: Officially, I'm out of time. Can I ask just one more -- I really haven't asked a question.

MR. O'KELLEY: Can I move on the Cat 3 just quickly. I understand the political pressures that are being placed to include Category 3. I ask that we be very flexible and open in what we can do to address those issues without over burdening the States, the NRC, and the system. I think we have tried to cover the aggregation through the increased controls on Cat 3 licensees that have aggregated totals into the Cat 2 range. We are expanding the interim database to included the Cat 3, 3.5, at least now. Maybe there's a compromise here where we can do every other year revision of that database without doing daily tracking of Cat 3 sources which I think that's the one that's really going to be the burdensome issue.

Maybe we can accomplish the goals of those that are pushing for this but maybe not necessarily as burdensome as immediate tracking as proposed by the National Source Tracking System. Just a thought.

COMMISSIONER LYONS: If I can get to one more question. I'm one of the ones who view the basis change on the NSTS as being following the path that the States strongly requested some years ago for increased involvement, and following the path that has been very successful with the increased controls. I would only compliment what you have done on that. I'm hearing your concerns on the resource requirements of the NSTS but at the same time in my mind, I view the NSTS as in some ways, reducing the resource requirements from the States in terms of providing, and I think, Jared, you somewhat addressed this, in terms of providing a more organized format for the overall tracking. And I would be curious in a few comments as to how, and Jared maybe other States need to speak too -- on where you see the increased burden really coming in? I'm having trouble seeing why it is a large burden.

MR. THOMPSON. Well, as a small State, it does not impose a burden. Speaking as Arkansas, it does not impose a burden. I don't have any manufacturers and distributors of Category 1 or 2 sources in my State. I do have licensees that do have them that would be required to follow the tracking so that is relatively easy to do. The impact is on the States and I think there was 5 and 2 of them are at the table, Florida, California, Illinois, New York, and Massachusetts, all because of the number of manufacturers, and the number of sources that they would be required to verify has been processed into the tracking system when they go inspect the manufacturer and the distributor. They are just looking at it from -- a lot of it is a time constraint issue. They go now and it expanded the length of time for their inspection and maybe Barbara or Debbie might want to address it from their State perspective because --

MS. HAMRICK: California's issue is purely a resource issue and it's not that

we necessarily see this as an equal burden to say the increased controls, but rather that the constraints on our resources right now are such that it's difficult for us to add additional staff.

It is a difficult process to add additional staff. So any time we do need to do that and quite frankly, we have not added the additional staff that we need really to complete the increased controls work. Now, our inspections are moving along as scheduled and we are bound and determined to meet the deadline but we have not been able to add new staff to take on that extra burden. And so any additional burden beyond that, it may reach the tipping point as it were. I don't want to say it that drastically, that's not true, but we have to be cognizant of the fact that our resources are limited and it's difficult for us to gain additional staff.

Ms. GILLEY: The same issue with Florida and ours is a human resource. We've been in a downsizing doing more with less type of philosophy for the last six years and we don't foresee having the opportunity to employ an additional FTE to take over these responsibilities. We do have a tremendous amount of licenses. So that is our issue. We would have to take away what we consider essential services from some other program part that we have in order to devote human resources to this task.

CHAIRMAN KLEIN: Following along that same subject on the Category 1 and 2, I think it's pretty clear that most of the Agreement States wanted that responsibility. I think the down side is the unfunded mandate. So you got the concept of the Agreement States verses then the implementation which usually means resources. And so I guess I'd like a comment probably from Florida since you're here and maybe your assessment of the others. In terms of the States that -- the five states that didn't favor that approach, I assume that it is primarily resource driven as you indicated. What percentage of this increase compared to your existing program -- in other words, if your program has X FTEs already, what is the delta that it takes in Florida?

MS. GILLEY: Well, we've done a lot of other things in order to be able to do the increased controls and security training. We have changed the frequency of doing some inspections and things we consider of lower risk than others in order to be able to accommodate the increased controls and security inspections. We are also looking at doing some training of our own to have more of our inspectors available. Florida is a very large state and for us to have 4 individuals qualified to do the increased controls and security inspections puts them in travel status quite a lot. So we are doing -- growing our own and doing our own internally, trying to accommodate that. With the source tracking -

CHAIRMAN KLEIN: My question is, if you look at your program now, how big does it have to be to do the source tracking?

MS. GILLEY: The source tracking: We probably need at least one or 1.5 FTE just for the purpose of doing the source tracking.

CHAIRMAN KLEIN: And how many FTEs do you already have?

MS. GILLEY: We have about a hundred. The problem is the inability to get the human resource in our program.

CHAIRMAN KLEIN: Having been involved in the same program, except Alice always had all the money she needed.

MS. GILLEY: Again, financial resources, we are trust funded in the State of Florida. So they are all financial resources but we have to have the authority to spend it and that would require the ability to add more people to our program.

CHAIRMAN KLEIN: I understand any time you add people that's in a State government, it is a challenge. I was just trying to get a figure of what the delta was.

MS. GILLEY: Now, for some States such as the State of Florida, we do a lot of business with grants and that was one of the reasons I put that as a proposal in my remarks, is that for emergency response and some preparedness, emergency

preparedness, we are able to put people in based on the grant. And so they are not considered full-time State employees. They would be grant awarded applicants that might could be used in Florida. But that is not available to all States. It may just be just unique to Florida.

CHAIRMAN KLEIN: This is probably for Paul and/or Barbara: In the State of California, do you know what their current budgeted size is and then what the delta might be?

Ms. HAMRICK: I'm not exactly sure. I think our actual budget dollars are \$18 million but one of the problems they have in sorting this out is the fact that our program is responsible also for the machine producing radiation. And so there's not always a clear division of FTE between the machine and the materials side of the house although they really do function completely separately. I think that -- I'm trying to -- let me just get a grip on this.

I think we probably are down about half of what Florida has, about 50 FTE devoted to materials in California.

MS. GILLEY: Mine was a comprehensive number.

COMMISSIONER McGAFFIGAN: Yours included the machine.

MS. GILLEY: It included emergency response and off-site surveillance, the entire program, laboratory personnel also.

CHAIRMAN KLEIN: I think as we work through that, it would be good to identify what's a real issue in terms of is it philosophy? Is it FTEs?

And then, is it money? And so you have all of those. I guess just one final comment before we turn on to Ed. I share Paul's comments on the philosophical approach. I would like to see all Agreement States as well because having seen the program in Texas, I like putting the responsibility and authority down at the local level. This may come as a surprise to people in Washington but not all good things occur in

Washington. There are other States out there that actually do quite a good job. But one of the questions for small States, it could be a challenge to have an Agreement State.

Have you thought of any approach to having a consortium where small States could get together to possibly become a coalition of States -- so it would not be a undue burden, but yet, it would get it into a local region?

MR. SCHMIDT: The information so far on the individual challenges that any particular State might face that it is not yet an Agreement State, there is a lot of anecdotal information, a lot of information floating around per se but it has not really been formerly looked at. So what I'm proposing to do, what I would like to do and in a few weeks beyond, is to really kind of formalize that and take a look at really, a study of the remaining non-Agreement States and find out exactly what it is, that is basically the hurdles they might have to overcome to pursue an agreement.

And there is likely to be some similarities among the States, but also, some specific differences. You mentioned the small program, that is one of the challenges. If you have a small program under a hundred licensees, if you look at the traditional Agreement State program which tends to have more than that, at least traditionally, that might not be a good candidate for that traditional type of program. You may have to look at an untraditional type of arrangement.

I think it was mentioned earlier, that then you are going to have jurisdictional issues. Most States tend to inspect within their borders. And that's where they end, they stop at their borders. So what other arrangement might be possible? I think the first step is to find out what the challenges are and then use that as a basis for discussion to look at how do you overcome those challenges.

CHAIRMAN KLEIN: Ed.

COMMISSIONER MCGAFFIGAN. Let me go to the Category 3 issue. And I don't think it's political, Pearce. I think you can do a risk assessment that leads you to a

conclusion that probably Category 3 sources need to be in the National Source Tracking System and we need to have pretty tight controls over them. And it comes from just a simple extrapolation of the DOE, NRC working group report. I'm not going to identify which radionuclides and whatever, but we chose the Category 2 levels which were then ratified by the IAEA on the basis of what it would take to get a person several hundred rem if they sat one meter from the device for some number of hours.

I forget the number of rem and the number of hours but you would have deterministic effects if -- if placed in a mall or something. And for dispersible radionuclides, we used a half square kilometer to the EPA first year intermediate PAG of 2 rem. So you can calculate, you sort of go from there. You go down a factor of 10 which is where Category 3 is, and if you're still dealing with the dispersible radionuclide, you're still dealing with -- not a half square kilometer but .05 square kilometer which is 200 meters by 200 meters contaminated to about the EPA PAG. So that's the sort of -- you know, that would be a bad event if it happens in a city.

Then, we have helpfully, the Physician for Social Responsibility putting out a report a week ago that uses a 25 millirem first year PAG. And under that theory, anything is a problem. And then we have GAO sort of piling on suggesting that trivial Category 5 devices are RDD useful and I commend Barbara for the letter that she sent to GAO to try to correct the record there. So we're not trying to be irrational here. We're not trying to be GAO. We're not trying to be the Physician's for Social Responsibility. But all of our Federal partners seem to be in the boat that we have go to Category 3 and then, we're looking in terms of collecting data for the extra factor of 10 down to Category 3.5 just to understand things.

So I think as Commissioner Lyons said, the writing is probably on the wall that we're going to head toward some sort of greater controls there. And that potentially impacts you. I think you've also right that DNDO is an extra player here. I personally,

would absolutely ratify the notion that we should have a NRC, DHS, Agreement State working group to work on these things. If you're getting, and I know our staff is getting, incompatible formats for different things from different entities.

We need to become the clearinghouse. We might need to include DOT and DOE in that working group as well just to remind them that we're the centralized regulator here. But I think that would be a good idea. But I just wanted to put in context, we didn't do this Category 3 thing, and I think it was unanimous among the Commission at the time, we didn't do it out of political pressure. We did it out of I thought, fairly rational analysis as to where the risks were. And where we're going. And I know it is a surprise. The other comment I'll make is we're not going to eliminate all surprises. I hate to tell you that, Debbie. My recollection on the 2 issues that I recall the Agreement States having a lot of problems with, the compatibility issues, Greta Dicus was our leader in the general license rule and wanting that to be I think it was then compatibility B or whatever, maybe it is still compatibility B. And she was the leader in T&E for the Part 35. And I remember the great State of Alabama was quite opposed and I think they had the majority of Agreement States, quite opposed to having T&E be a -- but we heard from other entities. We heard from the medical community and the general license thing, we heard from the manufacturers and distributors. And so we try to balance things.

So I cannot promise you that you will not be surprised again by future Commissions because in a rulemaking we hear from multiple entities. So I guess I never got a question in there. But if you want to comment on either the compatibility issue or anybody want to talk about the Category 3 issue in response to what I said, I would be happy to get a response.

MR. O'KELLEY: Well, the fact that there was no question was not a surprise. And I guess and I think Jared mentioned it too, I do think as far as the Category 3 goes, we would like to ensure that there is some sort of risk assessment, vulnerability

assessment tied into it as well.

COMMISSIONER MCGAFFIGAN: And I did mean it Barbara, I thought that the letter you sent to -- was it Senator Coleman and Senator Levin, was an excellent letter and it was good that it was not just us saying it. It was you all saying it because if we start following every ten micro curie cesium source, which I think would upset the EPA PAG for about the square meter of this table, then we really have problems.

You guys talk about resources and then the grants we would have to give you wouldn't be in the hundreds of thousands of dollars, they will be in the tens of millions of dollars.

MS. HAMRICK: Thank you, I very much appreciate that.

COMMISSIONER MERRIFIELD. Mr. Chairman, first, I would like to thank Barbara and Pearce. They were both involved with the task force on the control of radioactive sources and were very helpful in that regard. As the Chairman knows that is an effort that on behalf of former Chairman Diaz, I helped lead with our staff. I think we came up with a good report that our current Chairman signed out and I think the involvement of the States making that a better product and very positive. I'm sort of reminded of a duck hunter faced with a large number of ducks and trying to figure out which one to hit.

There were a awful lot of topics you all put on the table today. I would suggest in the future we try to see if we can refine that to a smaller number. I think you got enough things on the table. Sometimes I think at least in this kind of proceeding it makes it slightly unmanageable. That having been said, I think there were some good suggestions that I would certainly buy on to today.

I agree with Commissioner Lyons, we should consider the possibility of a transition plan for dealing with the issues you've spoken about versus having the rule come into play in February and then, obviously, when the governors have to sign on, that is something

within legal bounds should consider.

In terms of your comment, Pearce, on the number of requests you're getting from other members of our Federal family, can we be helpful in a task force, I agree with Ed if we can have our staff think about doing that. I think that makes a lot of sense. We too are confronted with the difficulty of multiple hats within the Federal family.

We are trying to grapple with some of that on our end but I can certainly appreciate and understand that the impact that has on the States. I noted the issue you raised about imports coming into your State or materials coming into your State that are going through multiple States. The NRC having a more appropriate role there, relative to interstate commerce, I think that is a fair point and I certainly will challenge our staff to go back and give some more information on that because I think that may well be an area that the Commissioner may need to take a higher profile.

I scratch my head at these meetings as I have in the past with the dichotomy that sometimes I see and the dichotomy is a desire of States to do more but confronted with the fact that due to your State government structure, you have a difficulty in that regard whether it's resources or people. I appreciate Paul Schmidt's comments. I hesitate to disagree with our Chairman. I come from a small State, New Hampshire. It's not Texas. And we have been struggling. And as a Commissioner, I have been struggling to try to help New Hampshire. New Hampshire has been in a lot of trouble with IMPEP over the years because they did not have the resources necessary to be compatible. Today they are doing well and that was because of the activity of our staff and the commitment of the Governor whom I spoke to on a couple of occasions to try to make that happen. It is difficult for us to always do that. I personally, do not foresee all 50 states becoming an Agreement States. When you see as I read this morning, Section 274, it seems to me that clearly within that Congress envisioned that there will be a range there.

I think for some small States, there is a law of diminishing returns. And some

States, I won't pick any particular State out but I think some it just simply don't make sense given the economic realities that they have and the capabilities they have the try to put them in that Agreement State box. So I don't know what the law of diminishing returns is. I don't know if it is 37, 38 or 39 but I think after 40, we may be getting there. But that's my personal view.

I'm slightly frustrated by the comments about what we are doing relative to the National Source Tracking System. I have heard we want the States to be more involved. Other States have resource constraints. Our biggest State has a problem with resource constraints. It's frustrating to me. That's frustrating getting it on both ends. And I think that is an issue that we are going to have a grapple with. Congress included within the structure of 274, 274J which we don't talk about very much but that's the authority of the Commission where the States are failing to meet public health and safety requirements for to us remove that authority. Now, I'm not suggesting we ever have to do that. But it's there. Congress put it there because of recognition sometimes the States may not be able to make it happen. And I think we as a Commission have to recognize as ultimately responsible for this authority, in the end the 5 members of this Commission are accountable to Congress for overseeing the Agreement State program. We're the ones that will get called to task. And we have to look at the resources you have, the capabilities you have and we have to measure that. And instructing our staff as to how to work with you, we've got to make sure at the end of the day, that the requirements can be met. And I think that's just a careful balance that all of us are doing to have to deal with.

The last thing, I think this group has made an important contribution and a lot of work that goes into being members of these committees. I do have to say having been a Commissioner now for 8 years, there are a number of States which have made a longstanding involvement in these efforts. Some of the bigger States are frequent -- we have always had somebody from California at the table. There are a lot of Agreement

States – and Texas. There are a lot of Agreement States that have never been at the table. And I think OAS and CRCPD both need to think about the diversity of the folks -- of the States involved.

I think that's helpful for all of us. I also appreciate Paul and in no criticism of anyone at the table, I appreciate your commitment as the head, the decision maker, the budget decision maker in your agency to take the leadership position that you are in OAS. I think it is very important that lead budget authority individuals from Agreement States and CRCPD be involved in these organizations. Nothing against people who are further on down the chain but the end, I think the heads of these agencies like Pearce and all the work that you have done, need to make that commitment and I hope they do that in the future. Thank you Mr. Chairman.

MR. O'KELLEY: Can I comment just a little on what Commissioner Merrifield said. And I'm in thorough agreement with almost everything. And if you look at the article I wrote for the CRCPD newsletter and it was specifically that same thing, trying to increase involvement, trying to get the States to step up. It's been a challenge. Several of us have been really trying to do that, trying to get some new blood, and will continue to do that. But you can lead the horse to water but you can't make him drink sometimes.

Another issue is on the IMPEP and lack of resources. I think it's incumbent upon the States to stand up to the plate and in some cases can actually go out and try to get these increased resources that are necessary. But I also know that a lot of us face a lot of obstacles when it comes to doing that. Personally, I have tried to champion the cause in the State to not great success at times. And I know in the past, we have discussed and you guys have been very gracious in providing letters of support to the States and offering that. Maybe it's time to look at doing another thing and adding on to that and helping us to get to our people that do control the purse strings and so forth by letting them know in that letter of support, here's the new challenges you guys are facing.

Here are the new things that your States are going to have to be able and capable of doing.

And I'm not talking about necessarily the increased requirements just NRC may be asking us to do or we're asking to let us do. But also, the increased burdens that are going to be put on us by DHS and other Federal agencies; just a thought that maybe we can add some of those to the letters of support. It may help some of the States get through because our voices are way down in the bottom of the valley and we're trying to talk to that guy up on the hill and they won't let us up there sometimes. So anything you can do to help us will be --

COMMISSIONER MERRIFIELD. Well, Mr. Chairman, just a comment. I think Pearce makes an excellent point. We have in the past agreed to send letters to States, sometimes at your request, sometimes not at your request. But I have from a personal standpoint, I have no problem doing that. I have no problem outlining to the Governors or to their immediate senior managers, the importance of the issues we deal with, the scope of the matters we have and the reason why they need to focus on this. And I know personally having spoken to the Governors about some of these issues, that they are not on their radar screen but when they become on their radar screen, they recognize the importance of the matters.

The bottom line of all of this and this goes to the heart of Section 274 is Congress wants us all to get the job done and to have a consistent manner of regulating these materials in the U.S. and we five are accountable to Congress for the requirements of that Act.

And we have to do in order to meet that public expectation, we have to make sure that we can make that happen in a way that meets those requirements. To the extent we can be helpful, we should be. To the extent that we have to act where the States have the inability to fund or resource these issues, we are going to have to act. Thank you Mr.

Chairman.

COMMISSIONER McGAFFIGAN: Mr. Chairman, I might just add, on the issue of letters of support, we have tended and I think our current rule is we send letters of support when the State really gets in trouble. We don't send them as a routine basis, here's what's on the horizon. We sure hope you can continue to adequately fund this important program. And I don't know, me speaking personally, I would be open to at least a one time letter especially when a new governor comes in or there's new -- in Virginia, it's every other year that they have a session where they really deal with the budget and the next year, they don't. But if you told us what the schedule was for particular States so that we would be on cycle, maybe short of a generalized letter early -- I don't know whether most States have biannual processes or annual processes but you know, I'm open to the notion of sending letters not just when you get in trouble, but when you try to stay ahead of the trouble and we would have to be careful. I know our lawyers I'm sure would tell us we're not supposed to be lobbying but we'll find a way to just praise the program and suggest that it needs to be continued to fund it.

Speaking as one, Commissioner, it strikes me that there is a germ of a good idea in what Pearce just said.

CHAIRMAN KLEIN: As Commissioner Merrifield indicated, we are accountable. If there are things we can do to help, I think we would all be receptive to that process because at the end of day, we want to make sure it's done right and it's done safely.

COMMISSIONER JACZKO: I just had a couple of comments to make and a couple of points that have been addressed and then a couple of quick questions. On Category 3, I think what I'm hearing, I think perhaps is really not an issue about Category 3 but it's an issue about the National Source Tracking System.

And the Commission has not made a decision. Well, we have made a decision

to move forward to incorporate Category 3 in the National Source Tracking, but that process, since we are not doing a current rulemaking, will involve a new rulemaking. So that will get to issues of the Reg analysis, will get to all those issues. There will be another opportunity for public comment. And certainly, an opportunity for the States to weigh in. So I think all of those things are not necessarily concerns. It seems to me what the concern is, is that if we move forward now with the basis that is public health and safety and down the road go to incorporate Category 3, that decision to have done public health and safety would not then have been in hindsight, the right decision, if that made sense. But I certainly think that we have a quick way to solve that and that is to go with the original basis that we had for National Source Tracking which is common defense and security. And I think that that gets at a lot of these concerns that are being expressed right now. There won't then be been the worry, that certainly, that Category 3 would place an undue burden on the States to try to implement that program.

So as I understood or as I was hearing, that seemed to be the most simple way to get out of that box which we have not yet built for ourselves, but there seems to be clear indication that's the direction the Commission is going. I did want to certainly comment a little bit on the ideas of Agreement States and moving forward with getting additional Agreement States. I've said quite often that I think the best program we can have is either one where all States are Agreement States or no States are Agreement States and clearly, counting up to 50 from 37 is easier than counting down from 37 to zero.

So I think we're moving in that direction. I certainly appreciate the suggestions of the Chairman and the comments of Commissioner Merrifield but that may not make sense for every State. That there may be some challenges that we can work through with smaller States to get them there but certainly from the NRC's perspective and I think probably from those smaller and smaller number of licensees that we regulate, they would appreciate not having an ever increasing share of the licensing fee being placed on a

smaller and smaller number of licensees. So I think there are a lot of reasons from a policy perspective that we want to get to more Agreement States.

Mr. Schmidt, you raised some ideas about how we get there. And one of the things that I just noted that maybe you're working on or maybe this is something you could work with the staff on is developing a set of say, a model application or a model set of, I know in some areas there have been model Regs developed by CRCPD but, a set of model regulations, model application, you know, even some kind of guidance document that staff could endorse that would give a sense of here's what an application looks like, at least the basics and some of the specifics for a State could be filled in. But at least, that may help in getting, facilitating some of other States that don't even know where to begin. At least that whole packet. Maybe you could comment on that if that is something maybe you are considering, or Barbara, even if you want to talk about if that's something that has been done.

MR. SCHMIDT: Actually, there is a lot of information available both from the NRC and other states and other organizations on what your legislation, your statute should look like, what your rules should look like, what needs to be included in your application, how that application is going to be reviewed by the NRC and that type of thing.

In my particular experience, that was not so much the problem. It was first of all, what kind of information is out there, it exists, but where is it? What is it called? What's it look like, that type of thing. And your agency did help kind of guide us in that direction. Of course, an individual would assigned to help us through that process and that was very helpful there. They can only go so far obviously. When it comes to developing the program within the State, NRC can't help with that. You've got to deal with that yourself. And there are a number of issues that each State has to grapple with in developing their own internal program. Some are political, some of them are budget, some of them are resource, that type of thing. And some of those issues vary by State. So, the first step in

my mind is try to get the landscape of what those issues are. Which has not been done yet, antidotally yes, formerly, no. Get the contact, and work with the non-Agreement States to pull that information together and then use that as a basis to find out all these common issues, do these issues vary dramatically by state, are these things that we can deal with and how?

But I think we need that piece in place first to discuss and evaluate and then, we can determine how do we move forward, can we help them? who can help them? how can we help them, that type of thing.

COMMISSIONER JACKZO: Well, thank you all. As I said, I think certainly, moving toward 50 is something that does make sense in the long term and you know, I certainly echo a lot of the comments of my fellow Commissioners about ways the Commission can be helpful in ensuring that you have the resources that you need to fulfill the mandates that you have. And I certainly, I do think that at some point, there is a limit on how much, clearly, we can interfere with State activities and there is a reason we hand these programs over to the State and that's for the States to manage them. And so, I think there is a line at which or a point at which we can't do more than perhaps what we have done but certainly, I think more proactive notification of the importance of these programs if that's helpful, I think is something I would support. Thank you.

MR. O'KELLEY: One comment on the Category 3, again, one of the issue with the States of concern and it's probably not so much with the Source Tracking System. But we'd hate to see this kind of lead down to an automatic inclusion of Cat 3 and the increased controls. I think that's definitely needs to require a lot looking and a lot of risk assessment. It may need to be re-looked at. I think one of the concerns here is, is this the first step toward the next step.

CHAIRMAN KLEIN: Realizing that we have passed our 11 o'clock ending point, and as Commissioner Merrifield indicated, we can't shoot all of the ducks, but let me

just see if there are any final questions?

COMMISSIONER LYONS: I'll see you in 16 days.

MS. HAMRICK: Yes, you will.

COMMISSIONER MCGAFFIGAN: I have just one quick question. The DHS RDD, IND protective action guides, you all were involved some of you -- I think Pearce was in commenting before they came out. I expect you commented during the comment period. Are those now understood typically, across the States, that they were issued for interim use and comment so -- I have one data point. Alabama did wonderfully in I think it's FRMAC exercise about a month ago. Southern Cross, they did wonderfully, despite Federal agencies not doing wonderfully in terms of advising them but they used the old EPA PAGs, not the DHS PAGs which are an update for RDD purposes. But is that issue understood because I worry because we have GAO. We have Physicians for Social Responsibility. We have a bunch of people propounding vastly different protective actions.

MR. O'KELLY: I think it's understood. I don't think it's agreed to necessarily because I know CRCPD commented, OAS commented.

MS. HAMRICK: Are we specifically talking about the long term, proposed long term PAGs because that is where -- the other PAGs are basically the same.

COMMISSIONER MCGAFFIGAN: But the long term PAGs, there isn't a PAG.

MS. HAMRICK: Right.

COMMISSIONER MCGAFFIGAN: The long term, there is a optimization process which the State will be a major player in, but there's not a commitment to a fixed end point.

MR. O'KELLY: I think a lot of the States did not support that idea.

MS. HAMRICK: And asked specifically for a range I think in your letter and OAS wrote in support of CRCPD 's letter.

COMMISSIONER McGAFFIGAN: And what was the range?

MR. O'KELLEY: I don't remember specifically.

MS. HAMRICK: It was fairly broad and it relied upon -- I believe it relied upon a report. It didn't just come out of thin air. It relied on a technical report and provided a specific range that we recommended.

COMMISSIONER McGAFFIGAN: But you had no problem with the intermediate PAGs, 2 rem first year, 500 millirem second year and thereafter, that was where you guys would draw the line in terms of your own thinking?

MS. HAMRICK: Yes.

COMMISSIONER McGAFFIGAN: Well, I think it is important that DHS finish those PAGs for final -- again they are guidance. The States can use them or not just as the existing EPA PAGs, the States can use or not. But there's so much confusion here. Witness the GAO report, witnessed the Physician's for Social Responsibility report that I would sure hope that we, and the States, could be on the absolute same page as soon as possible.

COMMISSIONER MERRIFIELD: I do remember, I did have a quick question. Another GAO issue, we were confronted with the notion of someone is at the Canadian border and they want to know if the license is valid. Customs Service with our assistance and the work of the States set up a program where they will if they got a license, in certain examples, they can call the State directly to get some information about that and presumably, folks are on call for that. Is that system working right? Or would we be better off -- when I was first confronted with this, it almost seems to me we would be better off -- there aren't that many calls the NRC might serve as a better first call for Customs and then, perhaps if appropriate, call your States. But I don't know if that is a good idea or bad or how that whole thing is working.

MS. HAMRICK: I'm only aware, in California, I believe we have only gotten 2

or 3 calls and in one case, we were not able to resolve whether or not there was a license because in many cases on the shipping papers, what you will find is not necessarily the name of a licensed person. The description of the materials appeared to be a gauge. It sounded like something reasonable, probably shipping it a customer facility that that the customer does not have a license necessarily. And so, it's a little difficult to -- even in the case where it is clearly looks like licensed material to identify which State would that license have been issued in; could this be coming from Florida to California, but it's really a Texas licensee. All those issues make it very difficult to determine in the few minutes that they would like to be able to determine this, whether or not this is truly licensed material.

And I'm not sure that pushing it back on to the NRC necessarily would resolve that issue.

MR. O'KELLY: I think we've got probably the best we can get right now. But, clearly, it has major shortcomings. And we haven't addressed those major shortcomings. I think when we are looking at what's the best way to resolve this whole issue is I think we really got to get to the table with DNDO because that's going to magnify it significantly and let's get a system that will work for all situations. And I think we need to start moving on it depending on how quickly DNDO deploys all their detection equipment and sets up. So I think that's where it gets back to the point we get this ball rolling. We get hopping. I think, as I said, defining how the data is to be collected and stored and up-dated, I think will be a major help for some of us sitting here saying, I don't want to reinvent the wheel, 2 or 3 times. Let's figure out what we want and do it right the first time.

COMMISSIONER MERRIFIELD: I understand the concern about consistency. Any number of Customs offices spread along borders and in 50 States and the possibility for a myriad of outcomes is endemic. So I do ink we need to continue to talk this one.

MS. HAMRICK: I would just like to add one thing to what Pearce said and that is that dialogue is so important because we need to determine what it is that is important to be looking at. The States strongly recommended in conversation with GAO that we, and NRC was on this side of the table also, that we start with a risk-informed approach to these sources.

And there was some resistance to that idea. But I think that's the only sensible way to get this under control.

COMMISSIONER MERRIFIELD: Well, not everyone in the Federal family is equivalent in their understanding of radiological materials. I'll leave it at that.

MS. HAMRICK: That's true.

CHAIRMAN KLEIN: Well, let me on behalf of the Commission, thank you for coming and presenting your inputs today. It is very helpful for us as we do our deliberations. And I know there were some comments about the reorganization. While that occurred shortly before I arrived on behalf of all the Commissioners let me just say that the State and Tribal program is very important program for the NRC and that Janet is the one that we all look to make sure that we have a good communication system and so let me thank Janet on behalf of the Commission for all of her hard work and we definitely intend to have a strong and very effective program, State and Tribal programs. Thank you very much. Meeting is adjourned.