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

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TUESDAY

AUGUST 21, 2007

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The Commission convened at 1:30 p.m., Dale E. Klein, Chairman presiding.

NUCLEAR REGULATORY COMMISSION

DALE E. KLEIN, CHAIRMAN

EDWARD McGAFFIGAN, JR., COMMISSIONER

GREGORY B. JACZKO, COMMISSIONER

PETER B. LYONS, COMMISSIONER

1 PARTICIPANTS

2 PAUL SCHMIDT, Organization of Agreement States, Chair,

3 BARBARA HAMRICK, Organization of Agreement States, Past Chair

4 CINDY CARDWELL, Organization of Agreement States, Chair-Elect

5 DEBBIE GILLEY, Conference of Radiation Control Program

6 Directors, Chair

7 JOHN WINSTON, Conference of Radiation Control Program

8 Directors, Chair-Elect

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

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2 CHAIRMAN KLEIN: Good afternoon. We're excited to hear from the
3 representatives of the Organization of Agreement States and I always have to look
4 at the other one the Conference of Radiation Control Program Directors. I haven't
5 memorized that one as much as I have the Agreement States program. But this is
6 a program that the Commission values and it's a high, longstanding program, so
7 we look forward to hearing from you today.

8 As you know, it's been an exciting year. This past spring the Commission
9 issued some orders on fingerprinting so that we would be in compliance with the
10 Energy Policy Act of '05. Obviously, we appreciate the positive response that
11 we've received from the States on that activity. You also know that we recently
12 had a GAO sting operation where an attempt was made to get a very low-level
13 radioactive source through a fake license and so that will have some applications
14 as well.

15 The NRC is trying to move rapidly to address the weaknesses identified and
16 we have formed a working group and so we appreciate the support on that one as
17 well.

18 In addition, from the existing Agreement States, as you know Pennsylvania
19 is about to be approved nearing the end of their application. We have Virginia and
20 New Jersey in the pipeline and Michigan has also expressed interest in becoming
21 an Agreement State. So we look forward to hearing your comments today. Any
22 comments from my fellow Commissioners? Paul, I think you get to start.

1 MR. SCHMIDT: Thank you very much. Chairman Klein,
2 Commissioners, NRC staff and guests, the Organization of Agreement States and
3 Conference of Radiation Control Program Directors appreciate the opportunity to
4 be here today with you and brief you on issues of importance to the State radiation
5 programs.

6 As you mentioned, I'm Paul Schmidt from Wisconsin, current chair of the
7 Organization of Agreement States and to my left is Barbara Hamrick from
8 California, the immediate past Chair of OAS and to her left is Cindy Cardwell from
9 Texas, the OAS Chair-Elect. And then to my right is Debbie Gilley from Florida,
10 the current CRCPD Chair and then to her right is John Winston from
11 Pennsylvania, the CRCPD Chair-Elect. I'd also like to acknowledge behind me is
12 Ruth McBurney from Texas, the new Executive Director of CRCPD.

13 We have a number of issues we would like to brief you on today; seven
14 total. The first of these that we'd like to address is the relationship between the
15 NRC, States, and the Department of Homeland Security, specifically the Domestic
16 Nuclear Detection Office, which will be covered by Barbara Hamrick.

17 MS. HAMRICK: Thank you, Paul. First, we'd like to thank you,
18 Chairman Klein and the Commission and especially Commissioner Lyons for your
19 support and facilitation of the Agreement States communications with the
20 Department of Homeland Security's Domestic Nuclear Detection Office or as we
21 commonly refer to that as DNDO. We'd also like to thank Dr. Charles Miller and
22 Ms. Janet Schlueter for their staff assistance in this regard.

1 It's important to the Agreement States that the NRC continues to encourage
2 and facilitate DNDO communications with the Agreement State Radiation Control
3 Programs as DNDO continues its development of a comprehensive domestic
4 nuclear detection architecture. In general, the feedback from the individual
5 Agreement States on the various projects that they have jointly initiated with
6 DNDO has been very good and the impacts to the radiation control programs have
7 been very manageable. But as DNDO's architecture expands, the impacts to the
8 radiation control programs will increase.

9 In addition to DNDO's planned actions, numerous additional actions relating
10 to security have been proposed by various parties to increase the security of
11 category three and potentially lower category sources, as well as the security of
12 the licensing processes including incorporation of an inspection component for all
13 licensees. These actions, if implemented, will also have an impact on our
14 radiation control programs.

15 The Agreement States are extremely supportive of appropriate and
16 reasonable efforts to enhance security, but our resources, like yours, are not
17 unlimited. At a minimum, what we hope is that potentially duplicative efforts can
18 be identified and consolidated before they are implemented. In particular at this
19 time, while DNDO is developing a framework for obtaining access to Agreement
20 State licensee or source information, NRC is also working on a National
21 web-based licensing system.

22 The OAS Executive Board suggests that it may be time to collectively

1 reassess where we are going with these independent efforts. Although NRC and
2 DNDO have separate and distinct missions, where these missions overlap and
3 particularly where they may impact the State governments, collaboration becomes
4 increasingly important.

5 The OAS Executive Board with NRC's agreement has previously
6 recommended to DNDO that a working group be established to include Agreement
7 State representatives, NRC staff and other agency staff as appropriate to address
8 issues of common concern, including issues related to source tracking, license
9 verification, adjudication of radiation alarms and disposition of sources, either
10 imported or domestic, that are not associated with the specific license.

11 We still believe that such a working group would be very valuable and
12 would serve to address the issues of common concern and jurisdiction at a high
13 level before potentially incomplete or duplicative actions are implemented.

14 Again, we are appreciative of the Commission's and the NRC staff's efforts
15 to enhance the Agreement States' communications with DNDO and we have great
16 confidence that our continued collaboration will be beneficial for all of our agencies
17 and more importantly for the American public. Thank you.

18 MR. SCHMIDT: If there are no questions, next Cindy Cardwell will
19 address issues related to the recent Commission fingerprinting order.

20 MS. CARDWELL: Thank you for the opportunity to come talk to you
21 today. We appreciate that. Since the enactment of the Energy Policy Act, the
22 directive to require fingerprinting and criminal background checks on individuals

1 having unescorted access to radioactive materials has been on the collective mind
2 of the regulators.

3 The consensus of the Agreement States was that this requirement be
4 developed and implemented through the rulemaking process; however, the States
5 are very much aware and sensitive to the fact that there are concerns about timely
6 implementation of this mandate of the Energy Policy Act. We want to express our
7 appreciation of NRC's responsiveness in forming the fingerprinting working group
8 and the steering committee associated with it.

9 We feel the groups are vital in order to develop a regulatory program for
10 fingerprinting that represents a consensus among the regulatory entities. We
11 thank the Commission for recognizing the importance of such a coordinated effort
12 in its March 12th, 2007 SRM, which directed the NRC staff to expeditiously engage
13 the Agreement States to develop a plan to require fingerprinting under public
14 health and safety.

15 The Agreement States see fingerprinting as another component of the
16 increased controls requirements, specifically within the requirement to determine
17 trustworthiness and reliability. The simple difference is the origin of the
18 requirement. The background checks to determine trustworthiness and reliability
19 for individuals granted unauthorized access were developed by the increased
20 controls working group. And of course as you well know, the Energy Policy Act
21 mandated the fingerprinting and criminal background checks also be a factor in
22 determining whether individuals are granted unescorted access.

1 Therefore, the Agreement States believe the fingerprinting and criminal
2 background checks should be developed and implemented consistent with the
3 manner in which the increased controls requirements were developed and
4 implemented; in other words, under public health and safety which is consistent
5 with your SRM direction.

6 However, several Agreement States have indicated both regulatory and
7 statutory concerns with the implementation of the fingerprinting requirement and
8 we believe those concerns are being worked through and worked on by the
9 working group process. Also to provide effectiveness in the fingerprinting and
10 criminal background checks requirements, the Agreement States feel strongly that
11 this qualifying criteria should be delineated with regard to the criminal background
12 check. And we fully support the opportunity the working group process provides to
13 obtain a consensus path forward in this direction.

14 The OAS Board wishes to formally commend the fingerprinting working
15 group for the extensive work it's done today. It was a large assignment that was
16 due in a short amount of time and they've done an extensive amount of work on it.
17 The Board and the Agreement States plan to closely follow the progress and the
18 products of the working group. In fact, the OAS has planned a facilitated
19 discussion on this very issue during our 2007 annual meeting which will be held
20 next month.

21 MR. SCHMIDT: Thank you, Cindy. Next, Debbie Gilley will provide
22 a State perspective on NRC rulemaking process and orders.

1 MS. GILLEY: Thank you. I would like to focus on the issuance of
2 orders and expand the topic to include not only fingerprinting and background
3 checks, but also the increased controls and security orders issued in 2003 and
4 2005.

5 State governments all have unique differences. The U.S. Nuclear
6 Regulatory Commission reviews compatibility of the radiation rules, but does not
7 address the procedural rules of compatibility. The NRC has an indicator in the
8 IMPEP process that looks at States' ability to perform licensing and inspection
9 activities, but may not address their many different administrative procedures.

10 Recently, I learned that some States can reference Federal regulations
11 without referencing the date; therefore, they can continually be compatible with
12 NRC, while others would be required to insert an effective date, changing the
13 regulations, thereby requiring the promulgation of new or revised rules.

14 Still other States' administrative procedures does not allow reference to any
15 Federal standard and they would have to adopt by rule each requirement. In the
16 CRCPD suggested State regulations, additional comments are included identifying
17 minimum compatibility items and other items that the committee and ultimately the
18 board feel compelled to include based on radiation health and safety.

19 Some States don't issue orders. Others cannot enforce office policies,
20 while others can include guidelines and policies in their rules. The bottom line is
21 that no two States administrative procedures are the same. What is true is that
22 regulations can be reviewed and can be evaluated for compatibility. NRC has

1 used orders in the oversight and regulation of the activities of nuclear power plants
2 and nuclear fuel facilities.

3 Orders mean something completely different to many States. Orders are
4 typically issued where there is an immediate threat to the health and safety of the
5 public. Typically these are issued to one licensee, individual or a company to
6 assure immediate discontinuation of some activities. Many State radiation control
7 programs have never issued orders to force licensees to change or stop an
8 activity. Only when there is non-voluntary compliance would a State issue orders.

9 Orders would be reviewed by the State's upper management and legal staff
10 and would be signed by high-ranking officials. Orders would be for serious
11 infractions.

12 In the review of orders issued by NRC prior to 2002, I found no record of
13 orders being used to assure compliance with new requirements over an entire
14 category of licensees. September the 11th did change the way we do business
15 and I do understand that security of any material that could be used to harm others
16 has come under scrutiny.

17 I am also aware of the sensitivity of the locations, security plans and who
18 has access to radioactive materials. But issuance of orders limits the participation
19 of the public, licensees and States to review and respond to these requirements.
20 The orders themselves are not the issue. The issue is that with wide sweeping
21 orders rules should follow.

22 The Atomic Energy Act of 1954 gives NRC the authority to create

1 regulations. These procedures for developing regulations were established to
2 assure participation by the public, stakeholders and the State. The process,
3 though tedious at times, assures that the regulations have public participation. It
4 provides a reality check.

5 There are numerous times when citizens in the State have opportunity for
6 public comment through public meetings and to provide written comments. These
7 comments must be reviewed and a response to each comment prepared. The
8 increased controls and security requirements for panoramic radiators and later all
9 category one and category two licenses were issued in 2003 and 2005
10 respectively. States have complied with these orders by issuing State orders in
11 those States that can do that are by amending licenses.

12 From a non scientific study, it appears that about 90% of these licenses are
13 compliant. The success of this process was because this was the right thing to do.
14 For those not in compliance, additional orders, civil penalties and termination of
15 license activities are available. The success of noncompliant activities may be left
16 to the hands of the legal offices of 34 States. Interpretation may differ from State
17 to State.

18 In some States the fact that orders have a negative impact on the licensees
19 and there was no public review may influence the hearing officer in his or her
20 decision. These administrative issues could be resolved with the promulgation of
21 rules. The States unfortunately cannot develop these regulations on their own
22 because this is an issue of compatibility. The States can work and participate with

1 NRC to develop these regulations and I am encouraging the Commissioners to
2 direct staff to begin the process of rule development for increased controls and
3 security, fingerprinting and background checks.

4 Just as NRC and the States responded to the development of the NARM
5 regulations in response to the Energy Policy Act of 2005, these regulations should
6 receive the same priority. The same participation from the States and citizens and
7 licensees should be expected, received and welcomed. Will the outcome be
8 different? Maybe some of the conditions of the orders will be modified or clarified
9 once staff become aware of the limitations and difficulty.

10 There is danger in developing regulations or orders in a vacuum.
11 Participation by those who have to implement the regulations can give great
12 guidance while still in the rule development process. Those participating in the
13 NARM rule development were often surprised by those who actually had
14 experience with NARM, the Agreement States, and some of their suggestions.
15 Our licensees have not had the opportunity to respond to these orders.

16 Most States have some type of Radiation Advisory Council that assist
17 States in the development process of regulations. Many States have requirements
18 to hold rule development workshops. These are extremely useful when new
19 regulations are required because of compatibility. They allow the Radiation
20 Control Office to discuss in an informal way the reasons or need for these
21 regulations. Other formal mechanisms are also available, including written
22 testimony and requests for an administrative hearing.

1 Commissioners, several of you have discussed with me the need for public
2 participation in the regulations and the need to hold workshops for licensees.
3 Some of you have even provided presentations discussing public involvement in
4 NRC activities and the need for openness and transparency. I suggest to you
5 today that the recent orders of 2003 and 2005 and the fingerprinting requirements
6 deserve the same attention.

7 The requirement for increased controls and security are publicly available
8 on your website. We already have an estimate of 90% compliance. I can't
9 imagine that the regulations would be too difficult to promulgate. You would then
10 give the States the regulations that they can adopt that will strengthen their ability
11 to get and keep licensees compliant. You will give the States the guidance from
12 NRC for NRC review in the IMPEP process.

13 In closing, public involvement is the cornerstone of strong, fair regulatory
14 industry. Public interest in the development of regulations of nuclear activities and
15 providing for citizens to make their own opinions known are extremely important to
16 ensure compliance. NRC has for other regulations solicited public comment early
17 in the regulatory process. Public involvement is vital to ensuring the public that
18 NRC is making sound, balanced decisions about nuclear safety.

19 Please consider the immediate initiation of the promulgation of rules for
20 safeguards material, possession and transfer of radioactive materials of quantities
21 of concern and the fingerprinting and criminal background checks. Thank you.

22 MR. SCHMIDT: Thank you, Debbie. I will address the next two

1 items. The first one being the status of OAS petitions for rulemakings. The
2 Organization of Agreement States has submitted a number of petitions for
3 rulemakings to the NRC over the years, including three that remain in various
4 stages of process. It's the most recent three that I want to focus on. One is back
5 in 1999, the OAS and the State of Colorado submitted a joint petition to eliminate
6 the blanket exemption for source material general licensees from the requirements
7 of 10 CFR 19 and 20. Basically it requests that the exemption in 10 CFR 40.22b
8 be revoked for certain source materials licensees.

9 We also submitted a petition back in June of 2005 to revise 10 CFR 31.5 to
10 require specific licensing of certain higher activity devices currently available under
11 general license and address a compatibility issue with 10 CFR 31.6.

12 And then finally, the petition that was submitted in November of 2005
13 requesting revision of 10 CFR 34 related to industrial radiography. On some of
14 these petitions we've had some activity as of late. On the petition for 10 CFR 34,
15 we had discussion last week with the petition review board on this particular item,
16 so there has been some progress on that and we also have been informed that the
17 petition for requesting specific licensing of certain higher activity devices has been
18 resolved. Essentially I'm looking at forming a working group to take a look at that
19 very thing.

20 Now we recognize the demands on NRC staff time, but we do hope for
21 eventual resolution of all of these petitions that I've mentioned. You'll also notice
22 that two of the petitions relate to the general license program which is the subject

1 of my next comments. The OAS has been concerned about the regulation of --

2 COMMISSIONER McGAFFIGAN: Can I ask a clarifying question?

3 Was it a conscious act to leave out the Governor of Washington's petition because
4 it wasn't originated by one of you, but was originated by the Governor?

5 MR. SCHMIDT: Yes, we are just talking about OAS petitions, so I
6 did not make any mention of the Florida petition, yes.

7 COMMISSIONER McGAFFIGAN: State of Washington.

8 MR. SCHMIDT: Sorry, the Washington petition. I did not intend to
9 mention that one, no.

10 COMMISSIONER McGAFFIGAN: There are others.

11 MR. SCHMIDT: Yes, there are, but not OAS initiated. I was just
12 focusing on that. As I had mentioned, looking at the general license program.
13 Again, we've had some concerns about the regulation of generally licensed
14 devices for a number of years now and as you know a number of Agreement
15 States have chosen to regulate certain of the generally licensed, or the GL
16 devices, more stringently than required under NRC regulations. This was done in
17 most cases that I'm aware of as a response to these devices being lost by the
18 users, ending up in the scrap stream, subsequently smelted, resulting, in some
19 cases, up to multimillion-dollar cleanups.

20 As I understand from States, such as Florida, this enhanced regulation has
21 been successful in improving device accountability and reducing the number of
22 incidents. During the past few years, there's also been some analysis of the

1 specific and general license programs, including a 2003 GAO report and the
2 Agreement States have done their best to work cooperatively with your agency to
3 address the recommendations in this specific report.

4 One area where we do feel additional regulatory attention is warranted is
5 the general license program as I had mentioned. On the one hand, the general
6 license is a very useful concept that makes good regulatory sense for some
7 applications. On the other hand, though, we feel that it is maybe too general and
8 includes some items that are more appropriately regulated under a specific
9 license. This of course was the subject of our 2005 OAS petition for rulemaking
10 that I mentioned earlier.

11 Since the GL program has existed for decades, it is fairly complex in nature
12 and it does vary somewhat within individual Agreement States. It's a difficult
13 program to evaluate nationally, to get your hands around it nationally to look at all
14 the nuances. However, we feel that a past effort provides a good template for
15 review of the GL program.

16 Back in 1995, the Commission authorized a joint NRC Agreement State
17 working group to evaluate control and accountability of licensed devices. This
18 working group held a number of public and technical workshops to obtain input
19 from interested stakeholders, including State and Federal regulatory agencies,
20 manufacturers and distributors of radioactive devices, the steel industry and a
21 number of others. We feel this group did a good job of analyzing a complex topic,
22 focusing on health and safety issues at the time and developed specific

1 recommendations to improve accountability of specific and general license
2 devices.

3 The recommendations were included in a formal report that was published
4 in July of 1996. Many of these recommendations ultimately were adopted in NRC
5 regulations including a registration program for the higher activity GL devices that
6 currently remains in effect.

7 The OAS understands that there's been discussion within NRC to create a
8 new working group to evaluate possible activity limits for GL devices. We strongly
9 support any effort to evaluate and improve the general license program. In
10 addition, we also suggest that this working group incorporate not only a health and
11 safety focus, but also a security focus in their deliberations. We believe the
12 addition of a security focus of this working group, if it's approved, makes sense in
13 the current environment, especially since it was not part of the 1995 working group
14 efforts. OAS members are prepared to assist with this effort as required.

15 And next, Debbie Gilley will address the topic of training.

16 MS. GILLEY: Commissioners, at this time I would like to change
17 focus and discuss some opportunities for NRC and the States. As I look around
18 the room, I'm noticing that most of us are 40-something and have 15 to 20 years of
19 health physics experience. To coin a phrase from the Health Physics Society
20 President, "we are preparing for a human capital crisis in radiation protection." We
21 are also doing a disservice to the future leaders of both NRC and the States.

22 With the exception of one or two of my State colleagues joining me for this

1 meeting, I met everyone while attending an NRC supported training program. I
2 look into the audience and to this day remember which course I took with each
3 and every NRC employee. I remember studying together. I remember sitting
4 together with Federal and other State employees listening to Dr. Paul Frank at an
5 Oak Ridge course.

6 We had been very fortunate to have a well qualified staff because much of
7 the training and education was provided by NRC to the States in the 1990's.
8 Unfortunately, States have had much more difficulty in participating in NRC
9 courses. Our junior staff is learning through mentoring with others within their
10 program, silos of training and education are being formed to assist in these
11 activities. On-the-job training is the norm and not the exception.

12 In addition to this observation, just as NRC was required to evaluate and
13 reduce budgets because of Federal financial shortfalls and the lack of a budget,
14 States are also experiencing similar issues. We share in the process of justifying
15 sufficient staff to continue essentials services.

16 What happens when these budget reductions become realities? A
17 budgetary cut of 10% for any State would probably wipe out their entire training
18 program and opportunities and much of it, if not all of their discretionary travel
19 budget. This leads the States with little they can do except in-house training or
20 on-the-job training.

21 Federal assistance from NRC training would be most appreciative. The
22 training itself is important but, there is another indirect benefit that should be

1 considered and that is the building of relationships between NRC and State
2 regulatory personnel. Who are you going to call when you have an issue such as
3 a radioactive cadaver? You will call someone you know that you think may have
4 had similar experiences that you met at a training course or a professional
5 meeting.

6 Other training initiatives that would assist States in ensuring we have
7 consistent training would be to look at alternative methods of delivery. Web-based
8 training, similar to the training provided by FEMA, might be very appropriate for
9 some subject matters. The CRCPD G55 Committee is currently working on self
10 study modules that combine video, PowerPoint and oral presentations. Again,
11 only certain familiarity topics would be appropriate for this training delivery mode.

12 I would like to commend and encourage the continuation of regional
13 workshops, such as the NARM training and you allowed State participation. Many
14 States will be able to send their staff because there's no registration fee and little
15 or no travel costs. In the future, I'd like to encourage any training programs to be
16 designed so they could be offered on a regional basis.

17 I would also like to commend the NRC for partnering with some States to
18 host training programs within their States. These have been very beneficial for
19 some States that have travel restrictions. Many of the larger States can co-host
20 the training with NRC contract staff to be both beneficial and maybe even a cost
21 savings to NRC if the training is held in a large metropolitan area. Again, not
22 every training program lends itself to the mobility classroom.

1 For other courses, nothing will replace the laboratory exercises that can
2 only be offered at a fixed training facility. The States need NRC financial support
3 to attend these programs.

4 I would propose that training can be a successful relationship. It is
5 decisions made today that will affect the future leadership of NRC and the State's
6 regulatory program. The training environment reduces or eliminates the "us
7 versus them" mentality. It builds respect between our staff. It establishes
8 long-lasting professional friendships and it allows for consistency in training.

9 In closing, I would like to encourage the NRC Commissioners to continue to
10 support and explore training opportunities that can reinforce our partnerships to
11 assure that we protect people and the environment. And this can be
12 accomplished through NRC financial support, alternative educational delivery
13 systems, regional training, and co-sponsoring training with States.

14 The return on its investment would be a core of nationally qualified radiation
15 regulatory personnel who have similar training experiences and who have
16 established professional relationships across State and Federal borders. Thank
17 you.

18 MR. SCHMIDT: Thank you, Debbie. And finally, John Winston,
19 CRCPD Chair-Elect will provide a State perspective on the planned closing of the
20 Barnwell, South Carolina low-level radioactive waste disposal facility.

21 MR. WINSTON: Thank you. As you know, in less than 11 months
22 the Barnwell disposal facility in South Carolina will no longer accept low-level

1 radioactive waste from generators outside the Atlantic Compact. This leaves 36
2 States, the District of Columbia and Puerto Rico without a disposal option for their
3 Class B and C waste.

4 Currently, there is no consensus within the radioactive waste community on
5 how to address the potential shortfall and disposal options. The 2004 GAO report
6 on low-level waste disposal availability identified three legislative options for
7 addressing the issue; letting the existing compacts address the shortfall and
8 disposal availability, repeal the existing federal legislation, or use DOE facilities for
9 disposal.

10 The subsequent task force identified two other options; the NRC use its
11 statutory authority to override existing compact restrictions to assist in a secure
12 disposal option or the NRC facilitate discussions with existing facilities to promote
13 access in instances of concerns with national security.

14 Some of the regional compacts are taking the lead by holding roundtable
15 discussions with the impacted parties in an effort to reach a consensus so that
16 Congress may take or consider legislation. The CRCPD and OAS executive
17 boards are concerned with what might be viewed as complacency on the part of
18 the licensees and generators of low level radioactive waste.

19 Are the licensees prepared for what might be a prolonged period without a
20 disposal option? Are they of the mind set that history repeats itself and a disposal
21 option will soon come available? And perhaps more importantly, have they
22 accounted for the concerns of vulnerability on their on-site storage facilities?

1 Financial assurance becomes a very difficult thing to determine when there
2 is not a disposal option available. The potential adverse impact on research and
3 development is also a concern. Research studies resulting in B and C waste may
4 be limited or avoided if there is no avenue for disposal or disposal is too costly.

5 The Scatter pilot project has revealed a substantial number of unwanted
6 sealed sources in storage throughout the targeted area. The Scatter program, as
7 you know, is a promising effort to round up and secure unwanted sealed sources
8 and can only be successful if a long-term storage or disposal option is available.

9 The successful volume reduction efforts of the early 1990's has changed
10 the outlook for development of a new disposal facility. For example, the
11 Appalachian Compact now only generates 2,000 to 3,000 cubic feet per year of
12 Class B and C waste. This is too small of a volume to financially support getting a
13 site permit, building and maintaining a disposal facility.

14 Although already in operation, even Barnwell is concerned with the financial
15 impact of reduced volume after it only accepts waste from the Atlantic Compact
16 States. Only a single disposal facility is needed for the 15,000 to 20,000 cubic feet
17 per year of Class B and C waste typically produced nationwide.

18 CRCPD stands ready to work with the NRC in surveying the waste storage
19 capacity and safety concerns among material licenses and insuring that all
20 licensees are well-informed and prepared for the possibility of no disposal option
21 for an extended period of time. Thank you.

22 MR. SCHMIDT: Commissioners, this concludes our planned

1 remarks. We'd now be happy to answer any questions or discuss any additional
2 topics you would like.

3 CHAIRMAN KLEIN: Thank you very much for that wide ranging and
4 thorough presentation. I think we'll begin with Commissioner Lyons.

5 COMMISSIONER LYONS: Thank you, Mr. Chairman. And thanks to
6 all of you. This was another very good presentation and I very much appreciate
7 the insights that you have presented. Also very much appreciate the collective
8 leadership that all of you demonstrate in working for safe and secure use of
9 radioactive materials across our country. That's a tremendous service and one
10 that should be greatly appreciated.

11 Cindy, I particularly appreciated your very positive perspective on the
12 challenges involving fingerprinting and I wasn't aware that there was going to be a
13 special session in Oklahoma City. I think that's an excellent idea. And by the way,
14 I'm looking forward to attending and I believe the Chairman is, too.

15 Debbie, your comments on the need to move ahead with rulemaking;
16 something I very much agree with, with the resource constraint, but I think the
17 Commission has recognized that we need to move ahead with rulemaking and
18 beyond orders at least as expeditiously as possible. And I also very strongly
19 support the points you made on the opportunities for increased involvement in
20 training from the NRC with the States.

21 By way of a first question, at this similar meeting last year the agency had
22 just created FSME and that organization was starting to come together. We asked

1 then and I'd like to ask again, if you have any comments, perspectives,
2 suggestions on the interactions that you have had with your organizations and
3 FSME, how that is progressing? If you have suggestions for how any of us can
4 work to improve that?

5 MS. CARDWELL: I'll answer that. As many of you may be aware,
6 the States had some concerns when we first learned about the reorganization.
7 Our concern focused on the fact that the old State and Tribal Programs Office
8 would not have the same visibility it did because it was merged with some others.
9 And, of course, with lesser visibility we had the concern that communication may
10 become an issue, that we may not get timely information - and I mean that both
11 ways - from the Agreement States and from NRC headquarters.

12 We are very pleased to say to you today that that's not been the case. In
13 fact, I guess our best recent example of how we were thankful that the
14 communication has been what it is, is with the recent GAO operation. The States
15 feel that we were notified as immediately as we could have been which we were
16 very thankful for because it allowed us to do some initial looking at what we're
17 doing and making sure that we were on track with preventing anything like that
18 from happening in the near future.

19 And of course as I mentioned earlier in my talk, in April when the OAS
20 board was meeting in Austin, we immediately worked with FSME - and I'm sorry I
21 can't remember what that stands for at this point in time - but they were extremely
22 responsive to our, I guess someone might call it insistence that we work through

1 the working group process that's been used so often and so successfully with the
2 NRC and the Agreement States.

3 We basically jumped on that topic right away. So we've been very pleased
4 with the way the communication has not only continued, but I think in some ways
5 improved.

6 COMMISSIONER LYONS: Well, that's great. I'm very glad to hear
7 that. Any others want to address that, too?

8 MS. GILLEY: I concur. It's been very good.

9 COMMISSIONER LYONS: Very, very glad to hear that. That was
10 certainly -- what you described is certainly the goals and hopes that I think the
11 Commission had as the new organization was set up. So I'm glad it's proving to
12 be effective.

13 Barbara, you spoke to interactions with DNDO. I think all of us have
14 certainly been very interested in that. You made a point which I strongly concur
15 with and that is where there are opportunities to ensure that what may seem
16 disparate or separate thrusts from either DNDO or NRC, you mentioned web-
17 based licensing, together with some of the DNDO efforts or interests in national
18 licensing activities. I think you're very right that we should look toward efficiencies
19 that might come about from trying to coordinate to those.

20 You also mentioned, if I heard correctly, that you're still looking toward
21 creation of a working group that would involve the States with DNDO. I believe
22 that was part of the request that we had made last year to DNDO and I guess

1 you're telling us that really hasn't happened.

2 MS. HAMRICK: That's correct. DNDO has extended a lot more
3 opportunities to interact with them, but they had been still somewhat resistant to a
4 higher level working group model, which of course was developed with the
5 Agreement States and the Nuclear Regulatory Commission and as Cindy
6 mentioned has worked so well and we've been successful in so many different
7 areas. But we have had the opportunity to speak with them again.

8 We met with them yesterday and I think that that's something that they are
9 becoming much more amenable to the idea and the benefits that that would bring
10 to their processes, the ability it would give them to interact not just with the States,
11 but also with the rest of the Federal family so that everybody can achieve the
12 goals that we all want to achieve.

13 So I think that while we're not there yet, I think that we're much closer than
14 we were last year. I think the board and CRCPD are very hopeful that we'll see
15 some progress on that soon.

16 COMMISSIONER LYONS: I'll join you in hoping and perhaps when
17 some of us are in Oklahoma City with you, we can discuss this further and see if
18 there's been progress towards that working group because I very, very much
19 agree with you that with the type of activities that DNDO wishes to undertake, they
20 have just got to understand the State perspectives and the State concerns
21 because it's a rather big deal.

22 I remember at the time we sent in the NRC letter to DNDO, one State,

1 Colorado, I think it was Colorado, provided a preliminary assessment of the costs
2 that might be associated with adherence to some of the requests from DNDO.

3 Just curious, have any other States prepared similar documents since then?

4 MS. HAMRICK: No, we haven't. But actually we have asked DNDO
5 to prepare such a document based on their experience with the Customs and
6 Border Protection because we think that while it's not a perfect parallel to what
7 they hope to achieve in the interior domestically, we think that it would be a very
8 good starting point and real life it would provide real life money and FTE and
9 equipment costs to provide to our States so that they would have a better
10 understanding of what the financial impacts might be.

11 I think they were also receptive to that idea, too, because they do have that
12 experience behind them. There would be some very solid background numbers
13 for us to start working from.

14 COMMISSIONER LYONS: I'm out of time, but let me just mention
15 that that same sort of background from DNDO or border patrol information might
16 be very useful in what I think is one of the biggest challenges that DNDO may face
17 if they deploy portal monitors that - let me use the word - are simply dumb, that
18 simply say some radiation went by, we think, maybe, and we've no idea how
19 much.

20 To me, the use of such very low intelligence portal monitors has the
21 potential to lead to a nightmare for NRC and the States and it may be far better to
22 deploy much more intelligent portal monitors, or whatever they are monitoring, that

1 can give far more information on both spectrum and quantity as opposed to just
2 saying we think something happened. I think we'd save a lot of time in alarm
3 adjudication.

4 MS. HAMRICK: I think we agree with you.

5 COMMISSIONER LYONS: Sorry I went over, sir.

6 CHAIRMAN KLEIN: No problem. I think we'll probably have another
7 round. Just to follow up on one of Commissioner Lyons' comments, Cindy, you
8 talked about the communication was better than you expected. Are there
9 organizational changes we should make to make it even better?

10 MS. CARDWELL: Well, that's a good question. I hesitate to speak
11 on organizational changes because each organization has its own drivers as to
12 what happens with that, but I would look to a recent occurrence that caused some
13 concern among some of the States that possibly might be a fix and that was the
14 deletion of the Agreement States Program Officer in headquarters.

15 The States were notified via an e-mail communication that had the directive
16 that that had been done and the idea behind it was I believe due to resources.
17 And that the States really should be funneling information through the regional
18 State Agreements Officers, which works. We have no problem with that
19 whatsoever and actually have good relationships with our regional State
20 Agreements Officers, but we just really appreciate having a contact person in
21 headquarters.

22 Sometimes for some issues we feel it more appropriate and potentially

1 more efficient and effective to contact that headquarters person. So if there's any
2 way to do that to reanalyze, we would appreciate having those contacts back.

3 CHAIRMAN KLEIN: I'm sure in our budgetary process that Charlie
4 will probably tell us if there's any restrictions or funds needed as we build budgets.

5 I guess, Barbara, you made a comment about the web-based licensing that
6 could be potentially a duplicate of DNDO and the NRC. It sounds like it would be
7 good to have a member of DNDO on our working group. That may be one way we
8 could facilitate, at least that one specific activity, since we'll have a working group
9 to look at that that we could probably facilitate a DNDO rep on that. I assume that
10 would be positive.

11 MS. HAMRICK: That would be excellent. As I said, I believe that
12 DNDO is very receptive to the idea of reaching out again. I hope - that was the
13 message that I took back from them and I hope that's correct because I think it will
14 benefit all of us if we have one system that will serve all of our needs.

15 CHAIRMAN KLEIN: In terms of -- Debbie, your comments about
16 regulations following orders. Do you think we should do it quicker?

17 MS. GILLEY: Yes, sir.

18 CHAIRMAN KLEIN: What do you think is the delay in that from your
19 perspective? Do we need to put more resources on? Are we not communicating
20 well?

21 MS. GILLEY: As far as the increased controls in security, I think the
22 framework is already there. I think we really just need to go through the

1 administrative process. We already have the compliance. We just need to backfill
2 it with regulations just to help the States out with having the appropriate
3 regulations to enforce the activities. I don't see that one as being much of an
4 obstacle. We've already kind of done the work ahead of schedule, but we do need
5 the regulations.

6 CHAIRMAN KLEIN: I know my colleague to the right has focused
7 many times concern about rulemaking and so it sounds like this is a follow on that
8 we need to follow up with the paperwork once we do some of the orders.

9 MS. GILLEY: It also gives us the criteria so that we're all working
10 together. When the orders are issued, there's still a lot of -- they're not narrowly
11 focused. They're very broadly focused. We want to make sure we are doing the
12 right things in the States and that means we want to be compatible. Therefore, we
13 need the regulations to address that we are compatible with what NRC's
14 expectations are.

15 CHAIRMAN KLEIN: Thanks. Paul, you mentioned some concerns
16 about the general license program. Have you all given specific changes that you
17 believe would be appropriate to our staff?

18 MR. SCHMIDT: Yes. We did include -- the model that we floated
19 was contained in our petition where we felt that some additional restrictions on the
20 types and activity of materials that would be available under a general license we
21 included that in the petition specifically and that was consistent with the isotopes
22 and the quantities that are currently under your registration program.

1 That doesn't necessarily mean that that's the only option possible, but that
2 was one idea we felt was worth considering. We think that a working group would
3 look at this in a little more broader scope, would really be the better way to go on
4 this, to really do a thorough evaluation of the program, look at the activity limits,
5 look at the general license program and come up with something specific.

6 We feel that would be responsive to the intent behind our petition, and
7 would be very willing to participate in that process if that's the way it's decided to
8 go.

9 CHAIRMAN KLEIN: Great. Thanks. Commissioner McGaffigan?

10 COMMISSIONER McGAFFIGAN: I have for many years noted that
11 we don't have enough resources devoted to rulemaking. I've been told by various
12 staffers that's because we value inspections first, licensing second, and
13 rulemaking third because we can always make deals with supplicant applicants
14 and basically implement new rules without saying we're doing new rules, it leaves
15 us out but leaves the staff in a very powerful position.

16 But I'm glad to hear the comments, but I will tell you under the current
17 schedule we're going to get much of this stuff fairly far in the future. Things always
18 come up and they consume resources and unless we add significant resources
19 into the budget so that we have wedges for the stuff that comes up and drives
20 rulemakings like the ones you're asking for into more distant times, unless we
21 have some contingencies, this stuff has a tendency to fall back year by year
22 because we already have orders there so we're not really fixing anything.

1 And so that's the Energy Policy Act has a bunch of rules that we have to do.
2 There's a bunch of other things we have to do. I hope we can get the people who
3 do rulemaking adequate resources and the people. In some cases they don't have
4 the FTEs. So I'm in agreement with you there.

5 With regard to fingerprinting, though, the SRM said try to get it done by
6 September 12th. It's pretty clear we're not going to get it done by September 12th.
7 I'm not sure who to address this to. That's a frustration to be honest with you. We
8 sent out a letter in June asking all the States to tell us what they thought and I
9 think 17 have responded and 17 haven't. We asked for the response back in July.

10 Maybe everybody is on vacation or something, but we take this matter - I
11 do, having been the sacrificial lamb at the recent hearing - take this as something
12 that Congress is not very patient on. They approach this matter entirely from a
13 security perspective. They aren't sympathetic to us working out in working groups.
14 So what is your guess, whoever is involved in the working group, as to when we
15 might have an outcome that is actionable from that process?

16 MS. CARDWELL: You want me to guess? I think that - I'll just let
17 you know that I served along with Janet Schlueter as co-chair of the steering
18 committee of the working group. They have done a tremendous amount of work.

19 COMMISSIONER McGAFFIGAN: I know.

20 MS. CARDWELL: They truly have. We are working through some
21 issues which is what the working group process is designed to do. It's what it was
22 put together for to achieve that consensus. They have also even gone beyond

1 and I know that the group itself has even worked on some of the implementation
2 guidance.

3 One of the things that we had originally intended to do in this fingerprinting
4 session that we are going to have at the OAS meeting was to talk about and get
5 some input to the working group about the implementation guidance. I think that if
6 given a little more time -- I'm not the one to give you the specific date, but I think
7 they have made significant progress and they are near a point where we can get
8 to a product.

9 COMMISSIONER McGAFFIGAN: One of the fundamental issues
10 raised by five of the 17 States that have responded is their Attorneys General don't
11 agree with our General Counsel as to whether they have the authority. One of
12 those is your state, California. It strikes me at some point we're just going to have
13 to, under common defense and security, get that done at the Federal level
14 because as I say, the patience level -- somebody else will be the testifier the next
15 time before the Permanent Subcommittee on Investigation, but the patience level
16 is not high.

17 The patience level in the government as a whole is not high given some
18 recent developments at the Department of Homeland Security in this area. I don't
19 know that they aren't overreacting. You're all mostly safety regulators. There's
20 different people in your States that are the security regulators and they might have
21 different views from you all on this matter, but I think at some point we have to
22 start making decisions on this subject and the sooner the better.

1 MS. CARDWELL: I think we can respond to at least you brought up
2 the fact that you've heard from 17 states and not from 17 of the other Agreement
3 States. We can speak for a few to say not hearing from them doesn't mean a yes
4 or a no in terms of statutory authority to do that.

5 We have submitted that particular -- the Energy Policy Act and the
6 requirements of it to our Office of General Counsels within our departments. Many
7 of us have not gotten back a formal response as to where we stand and what they
8 believe where we stand in terms of the statute.

9 MS. HAMRICK: I'd also like to comment quickly on California. We
10 were one of the States that came back and said we don't believe we have the
11 statutory authority to do it and at the time we were not pursuing a statute to do it.
12 We still are not; however, that issue is not foreclosed. That has not been entirely
13 evaluated and I think that there may be a movement toward obtaining a statutory
14 authority.

15 Now that would clearly push our time frame out from the other States and
16 so there would need to be some flexibility with respect to that implementation and I
17 don't know how flexible we can be.

18 COMMISSIONER McGAFFIGAN: When Congress passed the
19 Energy Policy Act of 2005, these provisions were clearly carried in a section that
20 was devoted to security. So they thought that they were probably exercising the
21 constitutional authority of the Federal government to handle security matters. I'm
22 not a lawyer, but that probably is what most members of Congress, or those

1 involved in these provisions, thought they were doing.

2 MS. CARDWELL: I think for just one more clarifying item. From what
3 we've heard from many of the States some of the issues, except with Barbara's
4 case, some of the issues were not necessarily we can't do it, we don't have the
5 statutory authority to do it. It was the lack at that point in time when we were given
6 the information of disqualifying criteria, if you will, what's the yes/no marker? And
7 of course there's always the States, I'm assuming as well as the Federal
8 government, give everyone the right to a hearing process once that happens.

9 In the absence of that, at the time the States were asked, that was raised
10 as a concern by many of them and we see those two items, the disqualifying
11 criteria and the hearing process as being something that's easily worked out
12 through the working group. I'll not say easily. It can be worked out through the
13 working group and we think that's the appropriate venue for it to be discussed and
14 come to consensus on it. I think that may clarify many of the issues the States
15 have raised.

16 COMMISSIONER McGAFFIGAN: Presumably we have, since we've
17 issued fingerprinting requirements to many other licensees, the folks who have
18 received those orders or those requirements that are in rulemakings for reactors,
19 this qualifying criteria must be something that is old news for those folks. It may
20 be new news for you all, but must be old news for much of NRC. I'll pass.

21 CHAIRMAN KLEIN: If at our next hearing if the Chairman of our
22 Oversight Committee asks those questions, we can always refer back to the State

1 that has some legal issues to deal with and encourage our Chairman of the
2 Oversight Committee to work within her state.

3 COMMISSIONER JACZKO: Mr. Chairman, I don't think with all due
4 respect when Congress passes laws that they expect that they have to have the
5 States tell them whether those laws are to be implemented are not. I have this
6 particular statute in front of me because I thought this discussion would come up.

7 I'll just read what this particular provision says. This is what Congress
8 passed, they amended the Atomic Energy Act to say "the Commission shall
9 require to be fingerprinted any individual who" - and there's a series of things, the
10 first one is "is permitted unescorted access to" - then a series of things -
11 "radioactive material, other property subject to regulation by the Commission that
12 the Commission determines to be of such significance to the public health and
13 safety or the common defense and security to warrant fingerprinting and
14 background checks".

15 I don't think Congress intended that we were going to have to ask you if you
16 had State statutes and that your States were going to have to pass laws to
17 implement Federal statute. This is a Federal statute we're talking about here. We
18 have the authority to implement this. This was an immediately effective provision
19 in the Atomic Energy Act. That was two years ago.

20 With all due respect to the working group that will happen in October, its
21 two years too late, all of this. Let's keep in mind what we're dealing with here.
22 This was a provision that was put in place in 2005. For two years we have not

1 implemented this successfully. It is a provision we have the authority to issue
2 orders to licensees throughout this country to implement immediately. So I have a
3 lot of frustration with the discussion. I fully appreciate the interest and initiative to
4 want to do rulemakings.

5 I think that's the right way to go eventually, but right now the Commission
6 made a decision on an interim basis we would do these orders. So I don't think
7 when we go back to Congress and we tell them we haven't fully implemented this
8 because the State of California hasn't passed a law, that that's going to carry a lot
9 of weight even with the Chair of our Oversight Committee in the Senate because
10 she passed a law. I don't think she expects to have to go back and have
11 somebody else pass a law to implement the laws that she helps get passed. So I
12 don't think this is a difficult situation to resolve.

13 I think there's a simple, straightforward way to move forward which is that
14 we exercise the authority that we have which is under common defense and
15 security which is how all of these provisions have been enacted. I was not one
16 who was supportive initially of the efforts to do the increased controls under public
17 health and safety. I will say that I think those were generally implemented pretty
18 well and quickly by the States and I think that was a success.

19 But fundamentally, we were playing a bit of a shell game there. That was
20 not a public health and safety issue. Those were fundamentally security issues,
21 common defense and security issues. It's precisely this kind of situation that I was
22 concerned about at that time. Where we would find ourselves needing to make a

1 change, the Commission wanted to implement an order to get that change
2 implemented quickly and we would be going through the machinations again of
3 dealing with how the State's were going to implement that, because fundamentally,
4 we didn't do it right the first time. We didn't do it under common defense and
5 security which we should have because then we wouldn't be sitting here arguing
6 about this. Quite frankly, this order would have probably been issued two months
7 ago, at least if not earlier. So I don't have a lot of patience on this particular issue.

8 And I don't think that these discussions back and forth about if you don't
9 have the idea of an understanding of criteria, again, when we went down the path
10 of increased controls what we heard from the States was we want to do this.
11 We're ready to do it. We know how to do it.

12 And now again we're hearing concerns about training. I'm hearing
13 concerns about you don't necessarily know how to process fingerprints. These are
14 all things that we do. They're all things we know how to do and we have the full
15 authority to do this. There has never been a question.

16 So like I said, I have not a lot of patience on this issue any more and I think
17 its two years beyond the time of which we could have and should have been doing
18 these kinds of things. So I certainly intend to push to have the Commission
19 exercise its authorities here and issue the orders where necessary. And I don't
20 think we need to spend a lot time talking about this.

21 It's an issue that eventually will get to rules and we can clean up some of
22 these issues when we get to the rulemaking on it, but in the meantime I think we

1 need to move on and get on to other business.

2 I do want to touch bases on some other issues. I don't really have a lot of
3 questions here. We had a previous -- I'm not sure if it was a meeting, an
4 OAS/CRCPD meeting in the past, where we had a discussion about civil penalty
5 authorities and whether States have civil penalty authorities. I know it was
6 something that our staff was asking. I'm wondering if any you can comment on
7 that.

8 Which of your States have the ability to exercise civil penalty authorities for
9 licensees that don't have compliance or that don't come into compliance and which
10 of you don't? And if you don't have that, if you could just get back to us on that.

11 MS. CARDWELL: I think we'll have to get back to you to do any type
12 of comprehensive. For that particular question, we can speak for our own States,
13 but we would have to quickly get that information for you and we can do that and
14 get back with you. Speaking for Texas, we have it.

15 COMMISSIONER JACZKO: Okay. Others?

16 MS. HAMRICK: California has the authority, but it has to be
17 implemented either through our Attorney General's office or through a local or
18 district attorney. We use it, but it's infrequently.

19 MR. SCHMIDT: Wisconsin has very strong civil penalty authority.

20 MS. GILLEY: Florida does also.

21 MR. WINSTON: Pennsylvania does also.

22 COMMISSIONER JACZKO: Okay.

1 COMMISSIONER LYONS: Maybe I'm wrong, Greg. Hasn't there
2 been a compilation of that provided?

3 COMMISSIONER JACZKO: Have we gotten it?

4 UNIDENTIFIED SPEAKER: Yes, sir.

5 COMMISSIONER JACZKO: Then I apologize, because I haven't
6 read my mail. But if we could maybe get that again. Thanks.

7 CHAIRMAN KLEIN: Commissioner Lyons?

8 COMMISSIONER LYONS: Just one follow up comment on Greg,
9 some of yours. I may have my dates somewhat wrong here, but I have a feeling
10 that some fraction of this blame that you're mentioning goes to the four of us. I'm
11 not sure of these dates, but August 8th, 2005, I'm sure of. That's the Energy Policy
12 Act. What I'm not sure is when the Commission acted on this. I think it was
13 March 2007.

14 COMMISSIONER JACZKO: That's correct.

15 COMMISSIONER LYONS: Frankly, that doesn't speak very well for
16 us.

17 COMMISSIONER McGAFFIGAN: That's March 2007 on the paper
18 that was submitted earlier, but we took action - we asked for this provision. I think
19 we drafted this provision, but we forgot to put in an effective date. And then it
20 dawned on us that people in the Congress were going to have to be -- last year's
21 crisis was the Office of General Counsel having finally discovered this was getting
22 out a rule that would allow various people in the States and the Federal

1 government, whatever, who already had background checks and fingerprinting to
2 be exempted and congressional staff; all of that. So I think it was about a year -

3 MS. CYR: That was the spring of 2006.

4 COMMISSIONER McGAFFIGAN: Spring of 2006. So it took us
5 about six or seven months to figure that we had a law that was immediately
6 effective on August 8th that we hadn't been properly executing. Then the staff --
7 and we went off at that point, I believe, and did the people who came under
8 common defense and security such as - I'm not trying to take your time - such as
9 the large panoramic irradiators, the manufacturers and distributors who we had
10 issued orders to in the 2004/2005 time frame.

11 We took care of that, but then the staff, I think in this particular instance and
12 in some others, worked in working groups and the consensus was to do a rule and
13 we should provide an exemption. We as the Commission unanimously said, that
14 is not politically viable in the climate in which we live here and we sent them off on
15 March 12th to come up with this alternative.

16 So starting with the crisis of making sure that we could actually talk to staff
17 members of Congress and States without forcing them to have duplicative
18 fingerprinting, we handled that last spring and then we handled things that were in
19 our immediate control, and then we had these four categories that we got this
20 paper on. In all cases, you were not the only one, the research and test reactors
21 were also looking for exemption in the rulemaking and we said no thanks.

22 Since that's entirely us, we were able to get that out very rapidly. But I think

1 that some part of the blame belongs to us. We probably should have put an
2 effective date into the law, but we neglected to do that.

3 COMMISSIONER LYONS: I think that chronology is useful for all of
4 us. As usual, your memory is spectacular when it comes to the details that I tend
5 to forget. Thank you.

6 COMMISSIONER McGAFFIGAN: You were writing the law at that
7 time, I think.

8 COMMISSIONER LYONS: I was here.

9 COMMISSIONER McGAFFIGAN: This was an enduring provision.

10 COMMISSIONER LYONS: I don't think you can blame this one on
11 me.

12 COMMISSIONER McGAFFIGAN: We didn't tell you.

13 COMMISSIONER LYONS: One other just general question. I think
14 we talked about this a little last year. We are at 34 Agreement States. If we look
15 at the potentials who might come in, maybe that number goes to 40. That number
16 is getting close to 50, is all I'm leading up to. There was some discussion last
17 year, I think Pearce may have suggested that there were discussions going on
18 between perhaps CRCPD and OAS on how your own operations might be
19 adjusted as the number of Agreement States increase.

20 I was just curious if there's been more discussion on that or how any of you
21 might see that general issue developing as the number of Agreement States
22 climbs towards 50?

1 MR. SCHMIDT: This is something we've been thinking some about
2 admittedly. One of the things that we've been discussing recently within OAS is
3 the fact that as the organization grows, the demands on the organization's
4 structure grows. And so we're looking at how can we better represent the
5 Agreement States? How can we interact better with NRC? Do we need to have a
6 more formalized structure?

7 The OAS structure right now is fairly self supporting, basically. The board
8 members are the ones who do all the work. Do we need more than that? Do we
9 need to do things like maybe partner with CRCPD for administrative support? Do
10 we need to establish our own internal structure? How do we adjust to the
11 administrative aspects of the growing number of Agreement States?

12 There's the issue, too, of providing support to States that have an interest in
13 pursuing an agreement which we have done at CRCPD meetings to try to get
14 information out to States that might have that interest. So it's definitely an issue
15 that we're sensitive to and we're pursuing those discussions between the two
16 organizations.

17 COMMISSIONER LYONS: Thank you.

18 MS. GILLEY: CRCPD has developed some guidelines to assist
19 people in becoming Agreement States or States to becoming Agreement States.
20 These guidelines were developed 10 years ago and of course the environment
21 which we work in now has changed significantly. So one of the things we're
22 looking at doing is going back to those guidelines and updating them with some

1 newer initiatives and some of the new things that have happened to make sure
2 that the guidelines we provide those States interested in Agreement States are
3 up-to-date and provide the correct FTEs and provide the correct resources that
4 might be needed to become an Agreement State.

5 COMMISSIONER LYONS: Thank you.

6 CHAIRMAN KLEIN: Would you like another question since part of
7 the time was --

8 COMMISSIONER LYONS: No, that was really the only one. Thank
9 you.

10 CHAIRMAN KLEIN: On the issue of training that you had mentioned.
11 I recall being one of the Agreement States of that time when the funds were
12 curtailed. And I really support the fact that we need to reach out from the NRC
13 and do more in the training area. One of the questions we often ask and I know
14 Janet, we've had this discussion, but have you given Janet a list of the kinds of
15 training that you think would be helpful?

16 MS. GILLEY: I have not, but I'll be glad to provide that to her.

17 CHAIRMAN KLEIN: And John, you mentioned obviously, the
18 Barnwell situation. I have a general concern. If you look at what's likely to
19 happen, if the States are restricted of where they can send their radioactive
20 materials, hospitals, schools, other sources will end up probably putting them in
21 closets and just storing them in probably unsafe conditions, which means things
22 like fires and storms and things of that nature tend to be a concern. What's your

1 sense out in the States? In other words, do the States see this as a problem
2 coming?

3 MR. WINSTON: Well, I think the general sense is that there is a
4 vulnerability issue there that we need to address and make sure that the sources
5 are secure. I'll bring up the Scatter program again. I think it's a very promising
6 program for those licensees. The power plants all have storage capacity or their
7 building storage capacity, so it's the hospitals, et cetera that we are concerned
8 with and if we can get the Scatter program rolling, we can round up a lot of those
9 sources and secure them.

10 CHAIRMAN KLEIN: But it doesn't address the continuing
11 manufacturing of these wastes from the hospital uses and other activities, so you
12 still have that volume. Have you had any situations where this material is ending
13 up inappropriately in landfills?

14 MR. WINSTON: I can't think of any specific instance, but I wouldn't
15 be surprised that there are occasions where licensees lose control of their waste in
16 that sense and sets off an alarm at a landfill somewhere.

17 MS. GILLEY: May I address this question?

18 CHAIRMAN KLEIN: Sure.

19 MS. GILLEY: The Scatter program, we're doing the pilot project in
20 Florida right now, so we've had some interesting experiences with the inventory or
21 identifying what sources are out there. And it comes back to some of the other
22 materials program issues that you're looking at developing a working group on and

1 we were surprised to find a lot of radioactive materials out there that's being
2 stored, being stored properly, but we would really rather have it disposed of.

3 Instead of disposing of material that still has a useful purpose, CRCPD
4 through their orphan source program is trying to find homes for this before we
5 actually fill up Barnwell with it. So if there's someone that's looking for a cesium
6 137 source for beneficial use, we're trying to match those people up so the
7 sources are not being inverted to disposal if they still serve a useful purpose.

8 I hope that's what we'll do. We'll evaluate that. If there's a home and a
9 need for them with the licensees, we'll do that as the first option.

10 CHAIRMAN KLEIN: Do you have a comment, Barbara?

11 MS. HAMRICK: I did, if you don't mind. I know in Pennsylvania they
12 have a number -- all of your landfills are monitored, I believe. In California, only
13 about 2% to 10% of ours are, but it's highly concentrated in the Los Angeles area.
14 So we have a lot of responses. It's very, very rare that we see a source illegally
15 disposed and generally that will be at the scrap yard, not the landfill. But like I
16 said, 99.9% of our responses are basically patient waste at landfills and very, very
17 few, if any - I'm trying to recall, I know we had one generally licensed source that
18 ended up at a scrap yard, but they caught it before anything happened. So it's
19 rare.

20 CHAIRMAN KLEIN: Thanks. Commissioner McGaffigan?

21 COMMISSIONER McGAFFIGAN: The Scatter program, NNSA has
22 this orphan source recovery program. As best I can tell if you ask them or we ask

1 them to come and take away sources, they'll take away sources. Isn't that right?
2 What's the relationship between the NNSA, the DOE, National Nuclear Security
3 Administration and Scatter?

4 MS. GILLEY: The Scatter is piggybacked on to that particular
5 program. The NNSA program only takes high activity category one and category
6 two sources that they can properly dispose of. These are the smaller sources.

7 COMMISSIONER McGAFFIGAN: It seems to be more than that.
8 I've seen some of the lists of materials recovered. For instance in Pennsylvania,
9 there may have been one or two, but they walk off with 10,000 sources if you can
10 leverage one or two that are truly high-risk.

11 MS. GILLEY: They are also isotopic specific that they can take. We
12 have all whole group of cesium 137 as an example of brachy therapy sources that
13 were used in medicine. That technology has been replaced with high dose remote
14 after-loaders and the cesium sources are being stored in medical institutions,
15 universities, broad scope academics and hospitals. That was the target -

16 COMMISSIONER McGAFFIGAN: That was something that I thought
17 NNSA would take. It's probably category three.

18 MS. GILLEY: Too small.

19 COMMISSIONER McGAFFIGAN: Too small?

20 MS. GILLEY: Right.

21 COMMISSIONER McGAFFIGAN: So they have criteria that the
22 cesium has to be above a certain amount?

1 MS. GILLEY: For NNSA to take it; yes, sir.

2 COMMISSIONER McGAFFIGAN: What's that amount for cesium?

3 MS. GILLEY: Its category two sources.

4 COMMISSIONER McGAFFIGAN: Category two around 20 curries,
5 27 curries? I didn't know they had that criteria. I was under the impression based
6 on some of the lists that I saw that they had recovered that they were taking
7 significantly less. If they're focused on only category two and above, that's
8 interesting.

9 MS. GILLEY: This is a partnership with them. They're actually doing
10 the inventory and DOE is providing the funding source and then CRCPD is
11 facilitating the roundup and pick up and disposal.

12 COMMISSIONER McGAFFIGAN: Okay. I asked earlier whether the
13 Governor of Washington was covered in your list of petitions for rulemaking. We
14 got a recent letter; I think the General Counsel got a recent letter from the Attorney
15 General of Nevada angrily asking what had happened to some of her petitions.
16 Some of which were very recent, I will say. I think she had four or five petitions for
17 rulemakings.

18 One of the things that I think you all have to think about at some point is
19 broadening your focus so that when you sit before us - we sit here and we have
20 safety authority, security authority, emergency preparedness authority and I don't
21 think we all necessarily make a distinction whether it's an OAS petition or a
22 governor petition or an Attorney General petition if it's in our area, it's a petition to

1 us.

2 I don't expect you to get involved in reactor matters. We have various
3 petitions for rulemaking from the Attorney General of Massachusetts, for example,
4 in that area. But it would be helpful if you could somehow broaden your focus to
5 include other elements of the State and that forces you into perhaps dealing with
6 an Attorney General or Governor's office, which it may be well above your position
7 in the bureaucracy, but someday it would be nice to have one-stop shopping for us
8 in dealing with the States.

9 I guess we have that with the Governor's designee, but sometimes those
10 are very high level officials, cabinet officials, sometimes they're one of you,
11 depending on how the bureaucracy works. But when it's one of you we worry
12 about security and emergency preparedness and things that are outside of your
13 authority and how you're trying to get messages that we're trying to send to those
14 bureaucracies.

15 I remember early on we had a very successful -- in DHS's history, we had a
16 very successful meeting over in our large room and various people remarked to us
17 that this was the first time they had met their State's radiation official or their
18 State's security official. We sort of brought them together in one room we had
19 NRC and DHS both talking. Maybe we need to do more of that, but somehow we
20 have to have you all understand the security focus of the people in your State and
21 have them understand the safety focus.

22 And one of the things that we talk a lot about here in reactor space, but it's

1 probably true in material space as well, is you can do some things for security that
2 are not necessarily good for safety. You can do things for safety that are not
3 necessarily good for security, so you have to look at where the synergies are and
4 safety security interface matters. It's hard.

5 We force ourselves to do it because we know that, but in your
6 bureaucracy's there isn't the same opportunity. You don't have this ominous law
7 that gives you all of these authorities. I don't know what the solution is, the
8 Organization of Agreement States plus Atomic Energy Act officials, or something.
9 I think that's one of the fundamental problems we sometimes face.

10 I don't know what the solution is, but I think it would be useful. At the
11 moment I think States do, New York in particular - nobody is from New York -
12 speak with multiple voices to us depending on which part of the bureaucracy
13 they're coming to.

14 We had Mr. Balboni who is a cabinet member as the initial State officer and
15 I think he's now delegated, but Mr. Balboni has a \$6 million budget and has the
16 State police and emergency preparedness and all those officials under him. And
17 then there are other people who handle safety and those who are not directly
18 reporting to him report, they report to other cabinet secretaries. It was a wonderful
19 model for the few months it lasted because you're talking to Cabinet member, a
20 former State senator, a State representative who really understood the processes
21 and he himself was obviously an expert in Homeland Security and emergency
22 preparedness more than he was on safety matters.

1 That was part of the job that he was worried whether would get done right.
2 I love to have - with all due respect to you, I'd love to have the Balboni's or the
3 equivalent from California or whatever sitting across the table from us at some
4 point.

5 MS. CARDWELL: May I comment?

6 COMMISSIONER McGAFFIGAN: Sure.

7 MS. CARDWELL: Of this, we're in the same mind frame. After our
8 meeting with DNDO Monday, we sat down and discussed this and this was one of
9 the examples that we said a few years ago when we had meetings with our
10 Homeland Security partners, it was one of the most beneficial meetings we had at
11 that level in I don't know how long; if we'd ever had that kind of meeting. As in
12 Congress, as it may seem, you're absolutely right.

13 COMMISSIONER McGAFFIGAN: It was a wonderful meeting.
14 Everybody told us from all directions and maybe we need to replicate it. We did it
15 once. What was it, in 2003 or so.

16 MS. CARDWELL: We did.

17 COMMISSIONER McGAFFIGAN: And we haven't -- its four years
18 later and we haven't replicated. We hope that the ties made that day were going
19 to somehow be eternal. That's not true anywhere.

20 MS. CARDWELL: The ties may have been eternal as long as that
21 position was in that position. As we know, that has changed quite a bit. In fact,
22 we discussed possibly one of the organizations, the CRCPD, having another such

1 facilitated meeting, especially in light of the security issues that are going on right
2 now.

3 It would be very helpful to us because as you said while that sounds
4 ridiculous, it's the absolute truth because we have different missions and we're
5 focused in different directions. While we may have that contact and we may know
6 the name, we don't have that daily interaction. That's something we would
7 definitely - those organizations would be willing to work with the Commission to
8 help facilitate. It was very helpful.

9 COMMISSIONER McGAFFIGAN: I'm just glad something -- as the
10 sole remaining Commissioner at the time that we pulled back during very, very
11 difficult budget times on training and travel for the States, I do think that it's time
12 for us and we have the budget before us, for us to think about changing that. We
13 had to do it in 1997 or 1998 when we did it, but our budget at the moment
14 Congress seems to be willing to give us help.

15 I know Senator Voinovich from Ohio is terribly interested in how we're going
16 to make this transition, this demographic transition to meet the demographic
17 challenge of a new generation of folks. And I think we can ask for it. We probably
18 have to have some discussion among ourselves, but my recollection was in the
19 FY1997 budget when we were still funding it, it was a \$2 million or \$3 million line
20 item. It was not a vastly expensive line item.

21 So getting back to the point where we're rubbing shoulders with one
22 another in training is a decision for the Commission to make in the budget

1 process. I'm glad you raised it today. We did it because we had to do it. Our
2 budgets have been going up for several years now and Congress has been
3 supporting them and there is an interest in demographic transition, the
4 demographic challenges that we are facing.

5 We've got 40% of our staff here less than four years and how we're going to
6 handle that and how we're doing various things to teach people to do the
7 transition; knowledge management, give them past history and all of that. I think
8 it's probably time and I'm glad you raised it today because I'll probably put it in my
9 budget vote, I'm the delinquent.

10 MS. CARDWELL: Thank you.

11 COMMISSIONER McGAFFIGAN: Can you give me a guesstimate as
12 to what would be needed if we go back to the pre-1997 policy? I'll ask the staff.

13 MS. CARDWELL: That's probably the more appropriate thing to do.
14 We can certainly provide you a prioritization of what training -- some things we're
15 doing effectively, I think, within States or within regional things or hosting NRC
16 meetings. Those have been effective in some cases. It's the ones that Debbie's
17 talked about that truly you need the hands-on.

18 COMMISSIONER McGAFFIGAN: Speaking to somebody who's
19 been here for 11 years, we do tend to have - I will swear that I have this problem,
20 too - we tend to have this focus on reactor matters. We really do. That's what
21 we're graded on mostly by the Congress. They want to get license renewal to
22 work. They wanted us to get the license transfer process to work. They wanted

1 us to get decommissioning to work.

2 We tend to not get a lot of report language on materials matters from the
3 congressional committees. I think we somehow have to overcome that. I speak
4 as I go out the door. We have to find a way to overcome that. That's just not good
5 government policy.

6 CHAIRMAN KLEIN: I think in answer to your question, I bet that
7 Janet can be in your office tomorrow morning with a number. Commissioner
8 Jaczko?

9 COMMISSIONER JACZKO: I wanted to turn to an issue that we
10 touched on. This was the issue of the GAO investigation. One of the points that
11 came out of that was a contrast between the State of Maryland and the NRC and
12 that was an area where the State of Maryland was doing site visits for pre
13 licensing site visits, which was certainly from the perspective of GAO and I also
14 agree, I think, was a good practice and it was not the practice that we were
15 implementing at the time.

16 I'm wondering if you can comment on your sense of what other States are
17 doing in that area and if there are other issues like that, like site visits, other things
18 we should be looking at taking advantage of the expertise that you have in those
19 areas to improve our process with our licensees?

20 MR. SCHMIDT: I can address that. Following the information that
21 we received on the GAO sting, we did a survey of the Agreement States to try to
22 compile some information on exactly what the States are doing in various areas,

1 who's doing what, how much, when, all that type of thing in this area. We did get a
2 response from the majority, not all, but the majority of the Agreement States.

3 What we got was - we did provide this to the NRC earlier, but I'll just
4 summarize some of the information we obtained from that survey. There are
5 some things that are done that are web-based, some things are done physically.
6 One of the things that's done web-based is that the majority of the States did
7 basically try to verify the legitimacy of that business through Internet means, such
8 as business checks, website. Do they have a website? Are they a legitimate
9 business on the Web and those types of things? Do they have a business
10 license? Those types of things.

11 A number of States and all Agreement States that responded to the survey
12 did use pre-licensing visits as a tool that they had in their toolbox. Some of them
13 did it all the time, Maryland being a case in point. Some of them did it just for
14 certain categories of licensees, like increased controls, that type of thing.

15 A number of States kind of did a variation on that and they would only hand
16 deliver new licenses to their licensees; physically deliver them to a license facility
17 which they view that as a form of pre-licensing visit. If anything looked odd at that
18 point time, they wouldn't give them the license, in essence.

19 The vast majority of the States use the NRC pre-licensing checklist,
20 basically the same tools that your license reviewers do to go through and do the
21 licensing process. Two of them used an alternative version, which was basically
22 the NRC checklist plus a little bit more, but it was a variation on just a little more

1 stringent.

2 What some States have done in response to this, in addition to that, some
3 of them are contacting local agencies, a local parish or county or whatever it may
4 be, authorities to get some kind of local information on that particular business.
5 Again, just another verification tool.

6 One State that we're aware of right now is looking at getting local law
7 enforcement or basically State law enforcement in this case to evaluate their
8 licensing process to get a security conscious type of evaluation of their process to
9 see if they have any suggestions on how they might modify that.

10 COMMISSIONER JACZKO: How many States were pursuing that?

11 MR. SCHMIDT: Just one that we're aware of from the responding
12 States..

13 COMMISSIONER JACZKO: What State was that?

14 MR. SCHMIDT: That was Nebraska.

15 COMMISSIONER JACZKO: Nebraska.

16 MR. SCHMIDT: And then also a number of States either were or
17 were looking at additionally doing cross checking applicant's status with other
18 State licensing and regulatory and health agencies. Just basically looking at how
19 does this business interact with other State agencies and we get some information
20 from them. Again, just as a verification tool that they're legitimate and doing what
21 they're supposed to and they are a legitimate material user.

22 COMMISSIONER JACZKO: Have you shared those results with all

1 the Agreement States?

2 MR. SCHMIDT: Yes, I have.

3 COMMISSIONER JACZKO: Thank you. That's the only question I
4 had.

5 CHAIRMAN KLEIN: Charlie?

6 MR. MILLER: Thank you, Mr. Chairman. I just wanted to make a
7 clarification on the point that was raised earlier by Commissioner Jaczko and
8 followed by Commissioner Lyons for the record. With regard to the information on
9 enforcement and the individual States, we put out an all Agreement States letter.
10 It's under the 30-day clock and the Agreement States are working on getting us
11 that information back.

12 COMMISSIONER JACZKO: So we don't have the answer?

13 MR. MILLER: We don't have a complete answer yet. You're correct,
14 but I think Commissioner Lyons, there have been various guesses over time and
15 there may have been anecdotal evidence that's been offered. We formally have
16 gone out and requested that information. We should be getting that information
17 back in a matter of weeks and I'm sure given the discussion today we'll get the
18 support from the board at the table of making sure we get a complete set of
19 information. Thank you.

20 COMMISSIONER JACZKO: Thanks.

21 CHAIRMAN KLEIN: Thank you. Thanks for that clarification.

22 COMMISSIONER McGAFFIGAN: Mr. Chairman, I think there was a

1 proposed rule that went out some time ago. I don't think we finalized it, which
2 says something else about our rulemaking process. I think it had to do with the
3 ability of folks to enforce the provisions with regard to - I'm trying to find the right
4 word - was it discrimination? There's a rulemaking that's on the books -

5 MS. CYR: Was it the safety conscious work environment area
6 relating to that?

7 COMMISSIONER JACZKO: Was it the whistleblower?

8 COMMISSIONER McGAFFIGAN: Whistleblower protection. And
9 how many States had authority there to protect their employees. I think we had
10 answers similar to the one that Barbara gave us that it's complicated to protect
11 whistleblowers in California compared to the Federal statute and I think we got
12 some comments on the whistleblower protection, the proposed rule; the final rule I
13 don't have any idea where it stands.

14 MS. CYR: It's not uncommon for States to go through their local
15 attorneys, the Attorney General to enforce their requirements. That's a common
16 format for States to have in terms of imposing civil penalties or orders or whatever
17 compliance measures they may take.

18 COMMISSIONER McGAFFIGAN: The Federal whistleblower
19 protection laws are probably more powerful because there are more of them.
20 Aren't they more powerful than typically in a State?

21 MS. CYR: It depends on the individual State, which I think is what
22 we're trying to find out.

1 MS. HAMRICK: May I comment quickly on that? In our state, that
2 actually comes under the jurisdiction of another entity. That's through the
3 Department of Industrial Relations which handles whistleblower complaints for all
4 different types of whistleblower laws. I don't know if it's more complicated or not
5 actually.

6 COMMISSIONER McGAFFIGAN: Okay. Thank you.

7 CHAIRMAN KLEIN: Well, thank you very much for a very good
8 presentation. Obviously as Commissioner McGaffigan indicated, while we may
9 sometimes concentrate on reactors, we do have an interest in other areas and we
10 really appreciate what you all do both from OAS and the CRCPD activities and so
11 all of those are really important.

12 For one thing, if we had to do at Headquarters all the work that you do in
13 the Agreement States, we'd have to have White Flint three and four. So, again,
14 thank you for a very beneficial presentation and also thank you for working with
15 our staff and making things better for the public we serve. Thank you. Meeting is
16 adjourned.

17