



U.S. NRC

UNITED STATES NUCLEAR REGULATORY COMMISSION

Protecting People and the Environment

NOTE TO FILE: Date of Document September 15, 2009

DATE: September 15, 2009

Name : Christopher Grossman, Assistance Performance Analyst */RA/*

Department: Materials Decommissions Branch

Division: DWMEP

Summary: The following document should be added to ADAMS with a date of September 15, 2009

Title: Nuclear Regulatory Commission Official Transcript of Proceedings for September 3, 2009

ADAMS Document No.:

License No.:

Mail Control:

Docket No.:

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Public Workshop on Unique Waste Streams
Depleted Uranium

Docket Number: (n/a)

Location: Bethesda, Maryland

Date: Thursday, September 3, 2009

Work Order No.: NRC-3039

Pages 1-254

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 PUBLIC WORKSHOP 1 ON UNIQUE WASTE STREAMS -

5 DEPLETED URANIUM

6 + + + + +

7 THURSDAY,

8 SEPTEMBER 3, 2009

9 + + + + +

10 BETHESDA, MARYLAND

11
12 The public workshop was convened at the
13 Hyatt Regency Bethesda, One Bethesda Metro Center,
14 7400 Wisconsin Avenue, at 8:30 a.m., CHIP CAMERON,
15 Facilitator, presiding.

16 PANELISTS PRESENT:

17 CHIP CAMERON, Facilitator

18 CHRISTINE GELLES, U.S. Department of Energy

19 GREG KOMP, U.S. Army Safety Office

20 RICHARD A. HAYNES, SC Department of Health and

21 Environmental Control

22 MARK YEAGER, S.C. Department of Health and

23 Environmental Control

24 ARJUN MAKHIJANI, Institute for Energy and

25 Environmental Research

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 PANELISTS PRESENT (Continued):

2 DIANE D'ARRIGO, Nuclear Information and Resource
3 Service

4 THOMAS E. MAGETTE, Energy Solutions

5 WILLIAM DORNIFE, Waste Control Specialists

6 FELIX M. KILLAR, Nuclear Energy Institute

7 MICHAEL T. RYAN, NRC Advisory Committee on
8 Reactor Safeguards

9 STEPHEN WEBB, Sandia National Laboratories

10 PETER C. BURNS, University of Notre Dame

11 GREGORY SUBER, U.S. Nuclear Regulatory
12 Commission

13 DAVID ESH, U.S. Nuclear Regulatory Commission

14 JAMES KENNEDY, U.S. Nuclear Regulatory
15 Commission

16 ALSO PRESENT:

17 KAREN PINKSTON, Nuclear Regulatory Commission

18 LARRY CAMPER, U.S. Nuclear Regulatory Commission

19 DAVID ESH, U.S. Nuclear Regulatory Commission

20 MARK FUHRMANN, U.S. Nuclear Regulatory Commission

21 S.Y. CHEN, U.S. Nuclear Regulatory Commission

22 JOHN GREEVES, Talisman International

23 DUNCAN WHITE, U.S. Nuclear Regulatory Commission

24 DAVID JAMES, David James Consulting

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS

| 1 | AGENDA ITEM | PAGE |
|----|---|------|
| 2 | Facilitator Opening Comments | 4 |
| 3 | C. Cameron, NRC | |
| 4 | Issue 1.5: Modeling of Uranium Geochemistry | 44 |
| 5 | in a Site-specific Analysis | |
| 6 | Introduction | 44 |
| 7 | K. Pinkston, NRC/FSME | |
| 8 | Issue 2: Unique Waste Streams | 106 |
| 9 | Introduction | 106 |
| 10 | D. Esh, NRC/FSME | |
| 11 | Issue 3: Agreement State Compatibility | |
| 12 | Introduction | 152 |
| 13 | D. White, NRC/FSME | |
| 14 | Issue 4: Long-Term Rulemaking: Waste | |
| 15 | Classification | 211 |
| 16 | Introduction | |
| 17 | L. Camper, NRC/FSME | |
| 18 | Issue 5: Other Considerations | 228 |
| 19 | Introduction | |
| 20 | P. Bubar, NRC/FSME | |
| 21 | Adjourn | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

(8:39 a.m.)

FACILITATOR OPENING COMMENTS

FACILITATOR CAMERON: Good morning, everyone. Thank you, Felix. We are waiting to see if we have got some of our other participants before we started off. I think we will wait about one more minute, and then we will get started.

Fifty seconds, Larry.

(Pause.)

FACILITATOR CAMERON: Well, I think we are going to have an interesting day today. I just wanted to start out with some agenda checks for you. And with a great amount of caution, I have tried to summarize some of the points from yesterday's discussion. It doesn't include a lot of things but some sort of the high points and should not be relied on for anything. But I thought it might be useful to do that.

Luckily we have a transcript. Charles has been getting everything. And the NRC staff and all of you will have that transcript to review before the Salt Lake City meeting, which is September 23rd and 24th at the University Court Marriott, Priya?

MS. PINKSTON: University Park.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: Okay. University
2 Park. If you look at your agenda, 3:15 we have "Other
3 Considerations." And there are some selected specific
4 issues that we are going to talk about there. Patty
5 Bubar, who is Larry Camper's deputy, is going to tee
6 that up for us.

7 For example, one of the issues I think is
8 going to be what happens in the interim. There will
9 be drastic climate change by the time this rule is
10 finished.

11 (Laughter.)

12 FACILITATOR CAMERON: So what happens in
13 the interim? That's a joke, Mike. Sorry.

14 (Laughter.)

15 FACILITATOR CAMERON: We will also get to
16 the parking lot issues at that time. I put them up on
17 the wall back here. Some of them we have dealt with,
18 but just a couple of things in summary.

19 There was a suggestion that there should
20 be some sort of response from the NRC to the issues
21 today. And I think that Larry and his staff are
22 probably going to prepare a summary for the Commission
23 on notable issues from this workshop. And I am not
24 sure they have decided that that is going to be public
25 or not. And this is probably news to Priya. You are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 telling her she is going to be doing that. At any
2 rate, there will be some type of a response.

3 The issue of doing an environmental impact
4 statement, rather than just an EA, was brought up.
5 And, of course, as Larry pointed out, the
6 environmental assessment has to be done. And that
7 will be the decision-making tool about whether there
8 should be an environmental impact statement.

9 One of the other issues is that all
10 options, rulemaking options, should be on the table.
11 One person, Arjun, suggested that. And, of course, in
12 the environmental impact statement or possibly even in
13 the EA, these types of alternatives would probably be
14 explored.

15 You will note that Larry is on the agenda
16 for this afternoon with long-term rulemaking. So we
17 will probably revisit that issue of what should be in
18 this particular rulemaking.

19 The issue of alternative state standards
20 was brought up. We will talk about that in the
21 compatibility section. And also the idea or the
22 concept "Is guidance a matter of agreement-state
23 compatibility?" we will get to that later on this
24 afternoon.

25 There was an issue raised by Larry's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presentation. And I think, Patty, this might be in
2 the other considerations. This is the sites that are
3 expecting DU versus sites not expecting DU. At least
4 that was the way it was framed by Janet Schlueter from
5 NEI yesterday, the whole idea of how do you consider
6 waste that has already been disposed of when you are
7 considering the proposed disposal of waste and other
8 issues like that. We will be talking about that.

9 Mike Ryan in his opening talked about
10 site-specific licensing conditions. Mike, if we
11 haven't explored that to the extent that we should, I
12 hope that you remind us of that.

13 In terms of a summary, I think one of the
14 big issues out of the gate was that it seemed like
15 there was -- I'm very cautious about saying there was
16 agreement of any type on things here, but there seemed
17 to be general agreement that there wasn't a need to
18 define significant quantities of DU, that this would
19 be taken care of by the site-specific performance
20 assessment.

21 Several rulemaking process issues were
22 raised yesterday. There was a suggestion from the NRC
23 staff. Maybe we can limit the rule to certain
24 categories of DU, certain sources of DU; for example,
25 enrichment. And, as Christine pointed out -- and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think there was a lot of agreement that this would
2 leave some important DOE DU waste out of the picture.

3 Question about direct final rule. Felix
4 raised that. And I think we have the answer from our
5 rulemaking folks that that direct final rule is for
6 rules where you don't expect any comments at all.

7 There was a question about is there enough
8 data now to assume a rulemaking based on shallow land
9 burial. And I remember that Larry and Arjun got into
10 a spirited discussion of that. Later on, subpart C
11 from part 61, there was an agreement that that could
12 be on the table in this rulemaking changed to subpart
13 C.

14 We had a discussion of some type of de
15 minimis or default level as sort of the opposite from
16 setting significant quantities. And I think there was
17 some push-back on that in terms of, well, the
18 site-specific performance assessment will take care of
19 that.

20 In terms of guidance on the rule, there
21 was a call for clear guidance to licensees to let them
22 know what they had to do in the performance
23 assessment, but there were also comments about the
24 need for flexibility and for iteration in the
25 performance assessment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 A lot of discussion, a period of
2 performance for addressing DU. People well, well,
3 look to precedence, look to the 10,000-year model.
4 Arjun commended us to look at the French experience on
5 this. There wasn't any agreement on what it should
6 be, but I think people felt that that period of
7 performance should be something that is specified in
8 the rule, rather than left to guidance.

9 And Mike used the metaphor of the dancer
10 and the dance, Mike Ryan, that the period of
11 performance -- you have to know what is required to be
12 demonstrated. That is intricately tied up with period
13 of performance.

14 And the other concept that was raised is
15 that you could have a compliance period of
16 performance, but then there would be some larger
17 analytical look at period of performance perhaps in
18 the environmental impact statement in the NEPA
19 process.

20 Exposure scenarios. That was one area
21 where everybody thought that this material should be
22 in the guidance, not in the rule. There was a
23 discussion of more realism in the scenarios for
24 exposure scenarios.

25 In terms of source term. we had a lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talk about engineering and barriers. There was a
2 suggestion that there might be a minimum standard for
3 waste form performance that takes into account the
4 geology of the site, but several people reminded us
5 that don't make the rule about waste form. And
6 several people commended us to look at the DOE work on
7 waste form.

8 I think it was Peter who talked about
9 durability, and we got into a discussion of a
10 durability versus stability standard. People said,
11 "Well, it has to be consistent with part 61."

12 I guess, finally, there was discussion.
13 Many times we heard about consistency with EPA
14 standards, radiation standards, chemical standards.
15 And so that was also something that bubbled up from
16 time to time.

17 We do have Dan Schultheisz from the EPA
18 with us today. Welcome, Dan.

19 And, with that, I just would ask, any
20 questions about agenda? Any comments on the parking
21 lot or the summary? Bill?

22 MR. DORNSIFE: Yes. I guess I would like
23 to just revisit quickly the issue of some lower limit
24 that is okay to continue disposing while deliberations
25 are being made. Is everybody comfortable that cone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the final rule is published and it says, "Thou shalt
2 do a performance assessment to determine what, if any,
3 you could take," that any disposal that is occurring
4 of any DU will come to a screeching halt until, first
5 of all, the agreement state implements that regulation
6 and, secondly, the performance assessment is done. I
7 mean, that was my concern with having some sort of a
8 level specified somewhere that shouldn't cause any
9 impact to any currently licensed disposal facility.

10 FACILITATOR CAMERON: So, yes. I remember
11 that your concern was that if there wasn't a de
12 minimis standard, if there wasn't a lowest common
13 denominator -- now, why? Diane walked in right when
14 we said that? No, no. We are just beginning to have
15 fun. So you are here on time.

16 The issue on the table is should there be
17 -- we called it lowest common denominator.

18 MR. DORNSIFE: An okey-dokey level. How
19 about that?

20 FACILITATOR CAMERON: An okey-dokey?
21 Okay. We eliminated the word "silly" yesterday, and
22 today maybe we will get rid of "okey-dokey," but I
23 think you know what Bill is talking about.

24 His assumption is if there isn't something
25 like that in the rules that states will say, "We are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to establish a moratorium on disposal until the
2 agreement states implement the rule," I would ask you
3 to not only comment on the idea of the okey-dokey low
4 level that Bill was talking about. But also is that a
5 good assumption that he is making that if there isn't
6 something like that, that there will be moratoriums?

7 Felix? And then I'll stop talking.

8 MR. KILLAR: Yes. Actually, I was going
9 to bring this up yesterday when this topic came up.
10 We ran into a similar circumstance back when we were
11 doing the NESHAPS rulemaking. You may recall with EPA
12 in the quest about that.

13 One of the things that came out of that
14 was there was a screening model and a screening
15 software program and that for a facility, they could
16 put in their experience in the screening model. If
17 they pass the screening model, they were done. If
18 they did pass the screening model, then they have to
19 go through and do additional analysis and what have
20 you to demonstrate or make some additional provisions
21 to do something along that line.

22 So it wasn't a de minimis or something
23 along that line. It was, if you meet this criteria,
24 you are okay. If you don't meet this criteria, you
25 are going to have to do something more significant.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And I think that is kind of what Bill as
2 trying to apply, that what we are looking for is a
3 very gross line of approval that if you are within
4 this level, fine, business as usual, what have you.
5 However, if you exceed this level, then you have to do
6 more work and more justification for why you continue
7 doing what you are doing or what have you stuff.

8 That way it doesn't stop the process but
9 at least establishes a threshold for acceptability.

10 FACILITATOR CAMERON: And so it would be a
11 tiered approach. Bill, is that in line with your
12 thinking? Is that one way of doing it that would
13 alleviate your concern?

14 MR. DORNSIFE: Well, yes. I mean, sure,
15 it would address it, but I think it would be easier
16 just to establish a number, a concentration that if
17 you're below this, it's a diffuse source term, just
18 like we do for diffuse norm, you know. I mean, it
19 either is or it isn't, and it's okay.

20 FACILITATOR CAMERON: Okay. And just one
21 other point -- we are going to go to Christine and Tom
22 -- is that the scenario you are raising was based on
23 the fact that the agreement states would take time to
24 implement this.

25 But this standard that you are talking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about, that would be something that would be set in
2 the rule. So it may not be effective because the rule
3 wouldn't be implemented then. So there would have to
4 be some other mechanism, I guess, to do that. And I
5 don't know what that mechanism is.

6 Christine, what do you think on this?

7 MS. GELLES: Thanks, Chip.

8 Actually, I wanted to ask, though, a
9 clarifying question because, first off, I think
10 everybody knows the Department of Energy is a
11 generator of DU waste that requires disposal in the
12 near term. So I am equally concerned about the
13 uncertainty about agreement states continuing to
14 permit disposal of DU between today and the pendency
15 of this limited rulemaking.

16 I think, Bill, you were addressing
17 something to be clarified in the limited rulemaking
18 that would resolve any ambiguity between its effective
19 date and the long-term rulemaking, which might be five
20 or six years out. So I just wanted to clarify that.

21 And I am just going to look to Larry and
22 to Patty. I think it is the Commission's intent. I
23 mean, I think it is pretty clearly stated that today
24 DU remains a class A waste and should be managed as a
25 class A waste up until the time that there is some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rulemaking that changes that or requires additional
2 analysis.

3 So I am struggling with understanding
4 whether what Bill is asking for really resolves the
5 near-term ambiguity.

6 MR. DORNSIFE: Well, I mean, for example,
7 like I said, in Texas, you know, they're not following
8 the NRC guidance. They would not allow us to dispose
9 of pure DU because of the concerns that have been
10 raised. So we came up with a number, a concentration
11 that below that, it would be acceptable.

12 And I am concerned that that same kind of
13 philosophy is going to leak out to other places, and
14 there needs to be some way, particularly after the NRC
15 rule gets adopted and somebody says, "Well, gee, the
16 interpretation is you can't dispose of anything until
17 you do a site-specific analysis," everybody is going
18 to say, "Hold it," you know, "No more disposal of any
19 DU."

20 MS. GELLES: Bill, is it possible that
21 Texas' action was because they issued your draft
22 order, your draft licensing order, before the NRC had
23 voted on the paper and had provided direction to the
24 staff?

25 MR. DORNSIFE: Well, no. This discussion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 occurred before that.

2 MS. GELLES: Okay.

3 MR. DORNSIFE: The actual negotiation, the
4 issue regarding DU, occurred before that.

5 FACILITATOR CAMERON: Okay. You are
6 raising a number of important issues. I just ask
7 Larry to hold for a time so that we can hear everybody
8 on this, Tom, Richard, Arjun, and then go to Larry.
9 And, Larry, if you would come to the table, that is
10 wonderful. Tom, your thoughts?

11 MR. DORNSIFE: Just another. Remember,
12 this issue is already political. And if NRC issues a
13 rule, you know, no disposal until you can do a
14 site-specific, you know, the politicians may jump up
15 and say, "That is what happens."

16 FACILITATOR CAMERON: Okay. And just one
17 point of information, a process point is that one of
18 the other considerations that Patty was going to tee
19 up for us this afternoon is this what happens in the
20 interim.

21 And I know that Larry and his staff have
22 had conversations with the state regulators about
23 this. And there may be something that is going to be
24 done in state space in the interim that may alleviate
25 this problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I am going to ask Richard, in addition to
2 what else he is going to say, if he could talk to
3 that, too. But, Tom, go ahead.

4 MR. MAGETTE: Speaking strictly
5 technically, I think I would say that I am
6 okely-dokely with an okey-dokey level. But I agree
7 with Christine in that I am not sure that that really
8 will resolve Bill's problem. And I agree completely
9 with Bill that this is potentially a problem because
10 it could also still be held in abeyance in some states
11 of view until they adopt the rule, even if it is
12 compatibility category B.

13 So just the fact that that number is in
14 there I don't think solves the problem that Bill
15 identifies, which is a real problem. So I think it is
16 going to be incumbent upon the NRC to find a solution
17 to this problem.

18 It could come in guidance. I think the
19 states generally are responsive to guidance that if
20 the NRC says in the statement of considerations, for
21 example, with the final rule that those specific
22 actions regarding an ongoing disposal of depleted
23 uranium is necessary pending the completion of a
24 performance assessment, then that is about as clear as
25 you can be. What I think we need is some clear,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specific guidance from the NRC.

2 I am not sure there is a perfect solution
3 here because of Bill's last point about the political
4 nature of this and what people will try to say about
5 what the NRC said when the NRC finally says something
6 in the form of a final rule is also true.

7 So I think we are going to be expecting
8 good faith implementation of the rule and the
9 guidance. But if someone just wants to be
10 obstructionist and use the fact that NRC is now saying
11 that you have to do something more with depleted
12 uranium as a means for delaying the disposal of
13 depleted uranium until all is said and done, well,
14 that could be a long time.

15 I mean, forget the second rulemaking. The
16 promulgation of guidance to supplement the first
17 rulemaking will take time. NUREGs don't pop out
18 overnight.

19 And so I think we need the NRC to speak to
20 the interim.

21 FACILITATOR CAMERON: Okay. We are joined
22 on the issue now on what happens in the interim. And,
23 Tom, that was a great, great summary. And it may be
24 that since we have had so much discussion already on
25 this point, that we keep discussing this interim issue

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and finish it off right now, instead of waiting until
2 this afternoon. But let's go with the flow and see
3 what happens.

4 Let's go to Richard and Arjun and then
5 Larry. Okay. Response, Richard?

6 MR. HAYNES: Okay. First off, I agree
7 with Christine's approach. That is, it is A waste and
8 up until the time that any reg changes come out. So
9 in the interim, it is A waste up until that time. So
10 I concur with that from South Carolina's standpoint.

11 Once the reg comes out -- and I think this
12 will go into a lot more detail this afternoon -- is
13 the state compatibility time frames and after that,
14 that once you get to the regs being finalized from the
15 NRC, it is going to take a period of one to three
16 years depending on the state process for the agreement
17 states to adopt that regulation depending on how their
18 system works.

19 In South Carolina, it would take a minimum
20 of one year. And what you do in the interim, that is
21 a tough question. I think that is going to have to be
22 each individual state's mechanism on how they want to
23 implement that in the interim.

24 And I would state from our standpoint to
25 realize that each state has the ability to be more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 restrictive than the federal guidance on that. So in
2 Texas' case if that is their prerogative to have a
3 more stringent standard or Utah, so would South
4 Carolina probably for that matter.

5 FACILITATOR CAMERON: Okay. Thanks.
6 Thanks, Richard.

7 Arjun? And then we'll go to Larry.
8 Arjun?

9 MR. MAKHIJANI: Yes. I think it would
10 defeat the purpose of the rulemaking if depleted
11 uranium from enrichment plants were allowed to be
12 disposed of in the interim. The Commission has said
13 and it is a clear matter of record that depleted
14 uranium from enrichment plants was not classified in
15 the earlier rulemaking and is not part of the
16 low-level waste framework. And that is why we are
17 having this.

18 So I think I would urge a very specific
19 exclusion because the record on this point is very,
20 very clear. If you are going to allow this, then the
21 question arises, are you going to unbury this waste if
22 some different decision is made? We already had been
23 discussing yesterday that a one million-year time
24 period for shallow land burial doesn't make technical
25 sense just in terms of performance assessment. At

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 least some people believe that. So I think that
2 should be off the table as an interim matter.
3 Otherwise this rulemaking doesn't make any sense.

4 So, as far as other interim things, I
5 recognize that there is an issue there. I would
6 suggest that the way the rule was made earlier is very
7 clear and there are 17 curies of depleted uranium
8 allowed in any disposal site at a concentration, I
9 would say, of 50 nanocuries per cc.

10 It is in the draft EIS. The evaluations
11 were done. I recognize, you know, the reference sites
12 may not correspond to all the exact sites which would
13 be disposed of, but at least there is a record there.

14 There is a regulation there. There is an evaluation
15 there. And there would be at least a reasonable case
16 for allowing that in the interim.

17 FACILITATOR CAMERON: Okay. And, Arjun,
18 just to make sure I am clear on that is that you are
19 taking an opposite approach. You are saying that
20 until this rule is proposed, data offered, comment,
21 that there should be no disposal of DU. Is that what
22 you're saying?

23 MR. MAKHIJANI: No, no. That is not what
24 I said.

25 FACILITATOR CAMERON: Okay. All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: I said small quantities
2 that were considered in the earlier rulemaking. As
3 defined in the earlier rulemaking, I think that would
4 be a reasonable case for allowing that, which is less
5 than 50 nanocuries per cc and 17 curies per site.

6 FACILITATOR CAMERON: Okay. Go back to
7 that.

8 MR. MAKHIJANI: Yes.

9 FACILITATOR CAMERON: Okay.

10 MR. MAKHIJANI: But on no account should
11 depleted uranium, any depleted uranium from enrichment
12 plants or pure depleted uranium, be allowed to be
13 disposed of. That just wasn't covered by the earlier
14 rule.

15 And I can show you by simple RESRAD
16 calculation that it is not at all clear that 17 curies
17 of pure depleted uranium would not cause problems in
18 less than 10,000 years. We have done the calculation.

19 FACILITATOR CAMERON: Okay. So there are
20 the views, Larry. And thanks for that clarification,
21 Arjun.

22 MR. DORNSIFE: Just a quick question. I
23 would assume that you would have no problem if an
24 agreement state has already approved something in a
25 license that has gone through a performance assessment

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and is justifiable that you could use that
2 concentration, ultimate limit, or whatever.

3 MR. MAKHIJANI: Well, you know, I have not
4 looked at your most recent licensing documents from
5 the WCS application. But at the time that we were
6 intervening in the LES case, the WCS came up, as you
7 know, as a potential disposal site.

8 At the time, as the record stood then --
9 maybe you were hired after that. I don't know, Bill.

10 But, as the record stood then, I felt the WCS was
11 completely unqualified to receive waste, much less
12 dispose of it, because in the license application,
13 they proposed to dispose of 12,000 metric tons of 235U
14 in the waste, which corresponds to more 235U than has
15 ever been mined.

16 Now, if you don't know how to read the
17 labels, how can you safely dispose of the waste? I
18 have the same kind of problem with underlying
19 technical document at the Clive, Utah site, at the
20 Energy Solutions site.

21 So I don't have a lot of confidence in
22 what the states are doing. I don't know if your
23 technical capabilities at your company improved since
24 that license application version, but I am not
25 comfortable with what I have seen of what the states

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are doing. And I am on the record as saying that the
2 NRC is not fulfilling its oversight responsibilities.

3 FACILITATOR CAMERON: Okay. This is an
4 important issue, but it is not directly related to
5 this particular rulemaking. So you can continue this
6 offline on this particular subject.

7 Greg, before Larry goes, do you want to
8 say one more on it since the Army has a lot of --

9 MR. KOMP: Yes. This goes back to
10 Christine's comment from yesterday. It is very
11 important we recognize that there is more than one
12 waste stream here, the more forms of DU that we're
13 disposing of. So as we go forward with this
14 amendment, we need to keep that in mind.

15 I agree with what Tom and Bill have said.
16 We need to have that capability to continue current
17 disposal until the new option comes in, whether it is
18 limited by the existing rules that may be a good
19 solution or it is another proposal within that rule,
20 but we definitely need to have that capability as we
21 move forward with this particular rule.

22 FACILITATOR CAMERON: Okay. Thank you.

23 And, Larry, the floor is yours.

24 MR. CAMPER: Thank you.

25 I mean, any one of these things could be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talked about for a very long period of time, but let
2 me try to address at least what I have heard, provide
3 some clarification in terms of what the staff is
4 thinking, and perhaps provide some clarification in
5 terms of the recommendation we made to the Commission
6 about this topic and what happens in the interim.
7 Then Patty will talk a lot more about it later in the
8 day.

9 This question was raised, I think by
10 Christine, as to whether or not this remains class A
11 waste. And the answer is yes. The Commission
12 reiterated during the LES proceedings that for
13 purposes of the proceedings, it remained class A waste
14 but then asked the staff outside of the adjudicatory
15 process to look at whether or not the quantities of
16 depleted uranium warrant so forth and so on. You
17 heard that yesterday.

18 Nothing that the staff did in that SECY
19 and its recommendation to the Commission changed the
20 class of the waste. It remains class A waste as
21 currently defined given the default provision.

22 This question of what happens now, if you
23 look today in 61.12, where it talks about certain
24 technical criteria that is to be evaluated, and you
25 look in 61.13, which requires a technical analysis,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there are those -- and we had the discussion amongst
2 ourselves as we were developing this particular
3 recommendation to the Commission -- as to whether or
4 not there was any need to do anything more because a
5 technical analysis, different term, not performance
6 assessment, is already required and, thus, is also the
7 case in parallel state regulations. The states that
8 currently operate low-level waste facilities have such
9 a requirement in the regulations.

10 So one could argue that there is already a
11 regulatory basis in place that would require a
12 performance assessment. Let's use the current term we
13 are using for purposes of discussion.

14 However, in looking at that, during the
15 course of our recommendation to the Commission -- and
16 we talked about it. I think it's on page 2 of the
17 SECY -- we wanted to be absolutely certain that there
18 was no question about the need for a site-specific
19 performance assessment given the large quantities of
20 DU that are now anticipated for disposal that were not
21 evaluated at the time part 61 was put into place.

22 It is for that reason that that was one of
23 the drivers that led us to make the recommendation
24 that we did. We wanted to be absolutely certain that
25 it was clear that that was the Commission's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expectation.

2 Now, also, of course, you have the
3 performance objectives in subpart C of part 61 that
4 have to be met. And that has been a requirement ever
5 since the regulation came into play. So one could
6 argue that there has already been, there is a
7 regulatory basis that necessitates an appropriate
8 evaluation of the site to determine that depleted
9 uranium or what other material could be disposed there
10 in a manner that meets the performance objectives of
11 subpart C and part 61.

12 So this initiative that the Commission is
13 pursuing now is above and beyond that for that reason.

14 That's why I said yesterday it is an enhanced
15 regulatory presence over the disposal of depleted
16 uranium.

17 This question of the role of the
18 performance assessment, let me address that by quoting
19 something that the Commission said during the course
20 of the LES proceedings.

21 The Commission gave considerable weight to
22 the authority and ability of agreement states during
23 the LES national enrichment facility hearings in order
24 CLI-06-15, which came out in June of '06. The
25 Commission states, "The NRC does not regulate any of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the five near-surface waste disposal facilities
2 identified in the FEIS as potential locations for
3 disposal of the LES depleted uranium. These potential
4 disposal sites are either regulated by state
5 authorities under the NRC's agreement state program or
6 by DOE. If LES ultimately chooses one of these waste
7 disposal facilities will fall within the purview of
8 one of these authorities, not the NRC, to approve and
9 regulate the disposal, we would expect," my emphasis,
10 "we would expect the appropriate regulatory authority
11 to conduct any site-specific evaluations necessary to
12 confirm the radiological dose limits and standards can
13 be met at the disposal facility in light of the
14 quantities of depleted uranium envisioned."

15 It was to certainly some large degree in
16 the staff's thinking that the Commission had that
17 expectation that we proceeded with the recommendation
18 that we did. Expectation should be codified in a
19 regulatory requirement. And that was certainly a
20 significant consideration of ours as we made the
21 recommendation to the staff.

22 So I think if one looks at the regulatory
23 basis today in part 61, if one looks at the
24 Commission's expectations, as expressed during the LES
25 proceedings with regard to the role of the agreement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 states conducting a site-specific performance
2 assessment, I think the basis is clear it is there.

3 Now, as far as what is being done in the
4 interim, I would suggest, as I did during my remarks
5 yesterday, that the interim is already being dealt
6 with. We have had discussions with the states in
7 which these facilities are located. They either have
8 or are in the process of developing performance
9 assessments or enhancing performance assessments. All
10 the states agree with us about the role of the
11 performance assessment. So we have initiated current
12 efforts to address the interim situation.

13 I said yesterday in our remarks that we
14 think it would be prudent to revisit that performance
15 assessment. We use that term carefully because, on
16 one hand, as I said, one can argue that you already
17 had this requirement in part 61, the technical
18 analysis, but, yet, at the same time, we are taking an
19 enhanced regulatory step, presuming this rulemaking
20 becomes a reality. So we are trying to find a balance
21 in our terminology by suggesting that it would be
22 prudent that performance assessments be reevaluated,
23 they be modernized, and they be appropriate for the
24 material that is expected to be received at these
25 sites.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The staff and the Commission, for that
2 matter, are fully aware that there is a high
3 probability that depleted uranium will go to at least
4 certainly the Clive, Utah site. And, therefore, we
5 are placing an emphasis upon this particular point in
6 terms of the role of the performance assessment.

7 So we think that the interim concerns are
8 being addressed and will continue to work and talk
9 with the states throughout the course of this
10 rulemaking. They may very well turn to us and ask for
11 guidance or assistance as they conduct their
12 performance assessments or refine their performance
13 assessments.

14 We are certainly prepared to assist in
15 that regard. We have a technical assistance process
16 for agreement states whereby we do that. I don't know
17 if they will, but they might.

18 So I think that the interim is underway.

19 FACILITATOR CAMERON: Okay. Great, Larry.
20 Thank you for that, especially that last part.

21 Arjun, I will --

22 MR. MAKHIJANI: I am completely confused.

23 FACILITATOR CAMERON: We will hopefully
24 un-confuse this. And one way of doing that is we
25 heard what Larry has said and particularly the last

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 part about the states already doing performance
2 assessments to look at DU, possibly an offer of any
3 assistance from the NRC in doing that.

4 I have a question for Bill and Tom,
5 Christine, Greg. And then I have a question for
6 Arjun, and you can get your clarification on that.
7 The question is, the interim approach that Larry
8 described, does that alleviate the concerns that we
9 have heard expressed?

10 And for Arjun, does that alleviate any
11 concerns that you have? And, Arjun, if you need a
12 clarification on what Larry said, let's get it on now.

13 Okay?

14 MR. MAKHIJANI: I said I got confused
15 because I am truly confused. Are you saying that if
16 this performance assessment is completed, that in the
17 interim, the agreement state licensees would be
18 allowed to take depleted uranium from enrichment
19 plants if they think it's okay?

20 MR. CAMPER: A facility authorized to
21 receive class A waste can take depleted uranium.

22 MR. MAKHIJANI: Well, I just want to be
23 clear what you are saying.

24 MR. CAMPER: I don't know how to say it
25 more clear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: Including from the plant
2 or not?

3 MR. CAMPER: Depleted uranium remains
4 class A waste. If you are authorized to receive class
5 A waste, you may receive depleted uranium.

6 MR. MAKHIJANI: Then what is the purpose
7 of this rulemaking?

8 MR. CAMPER: The purpose of this
9 rulemaking is to require, to ensure that a
10 site-specific performance assessment is done to
11 evaluate the quantities of depleted uranium
12 anticipated from enrichment facilities and to provide
13 the technical criteria that is to be evaluated and to
14 provide guidance in conducting performance assessments
15 to evaluate those quantities of material.

16 MR. MAKHIJANI: Well, you have some
17 obligation to be clear with us. Does that mean that
18 in the interim, you are going -- the purpose of this
19 rulemaking is about depleted uranium from enrichment
20 plants.

21 Is what you mean that in the interim,
22 disposal of depleted uranium from enrichment plants
23 will be allowed if a licensee completes their
24 performance assessment?

25 MR. CAMPER: The agreement states --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: It's a straightforward
2 question.

3 MR. CAMPER: I'll try to give you a
4 straightforward answer. The agreement states that
5 regulate low-level waste facilities are the ones that
6 provide the regulatory oversight of those sites in
7 their states.

8 Let me finish the answer, please. Nothing
9 in the course of this rulemaking has changed the class
10 of the waste. If the state has authorized a disposal
11 facility to receive class A waste, they may receive
12 class A waste, including depleted uranium.

13 FACILITATOR CAMERON: I think that Arjun
14 --

15 MR. MAKHIJANI: I can't agree with that.
16 CLI-19-05 in October 2004 clearly said that a new
17 rulemaking was required for depleted uranium from
18 enrichment plants because it was not currently
19 classified within the existing scheme.

20 So the idea of the depleted uranium from
21 enrichment plant is class A waste under the existing
22 schemes is entirely wrong and goes against the
23 direction that you got in 2004 and under which we are
24 currently convened here to review that matter.

25 If you are going to allow depleted uranium

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 disposal from enrichment plants in the interim, you
2 might as well forget this rulemaking and forget
3 CLI-19-05 from October 2004.

4 FACILITATOR CAMERON: Okay. And that
5 answers the question I posed to you, Arjun. And I
6 think that the short answer that you were looking for
7 from Larry is yes. He's saying yes.

8 MR. MAKHIJANI: He should say so. He
9 should say yes, we are going to allow depleted uranium
10 disposal from enrichment plants if that is the intent.

11 If that is not the intent, he should say current
12 practice is allowed but enrichment plants, not
13 allowed. We are looking for some clarity here.

14 FACILITATOR CAMERON: Okay. And I
15 certainly don't want to answer the question for them,
16 but I think that what I was hearing is still class A
17 waste. Larry, is there a yes or no answer to Arjun's
18 question?

19 MR. CAMPER: I have asked the Office of
20 General Counsel to review the document that Arjun is
21 referring to. But in the course of the proceeding,
22 the Commission reiterated for the purpose of the
23 proceeding that it was class A waste. The Commission
24 then asked the staff to do a certain type of analysis
25 and question if these are the quantities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Nothing in the proposed action by the
2 Commission at this point in time changes the class of
3 waste. It remains class A waste.

4 FACILITATOR CAMERON: Okay. Going to Tom
5 and Bill, Larry's description of what is going to
6 happen in the interim before this rule is not only
7 final but implemented by the agreement states, does
8 that take care of your particular concern? Yes?

9 MR. CAMPER: Regarding your question on
10 what happens in these states, I mean, for example, the
11 State of Utah Radiation Control Board is currently
12 considering a moratorium on the disposal of depleted
13 uranium, large quantities from enrichment facilities.

14 That is up to the State of Utah and its Radiation
15 Control Board.

16 I do not know what the outcome of that
17 will be. We are going to be appearing before that
18 board and answering some questions on the afternoon of
19 September the 22nd, but that is a matter for the state
20 and in the state of Utah, its Radiation Control Board
21 to consider this request for a moratorium.

22 Now, we do not know what their action will
23 be. If they were to pursue such a moratorium, it does
24 raise a number of procedural questions to see how that
25 would be enacted. And it does raise some questions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with regards to compatibility and so forth. But we do
2 not know what that board will decide to do.

3 Each of the states in which these
4 low-level waste facilities are licensed may choose to
5 take actions within their jurisdiction with regards to
6 the receipt of depleted uranium. But that is a state
7 matter.

8 FACILITATOR CAMERON: And, Larry, the
9 intent, is it fair to say that the objective of the
10 rulemaking is to codify a requirement for a
11 site-specific performance assessment for depleted
12 uranium and to specify what the parameters of that
13 performance assessment should be and to offer guidance
14 for doing the performance assessment?

15 MR. CAMPER: Yes, that's correct.

16 FACILITATOR CAMERON: David?

17 MR. ESH: The other thing I would add --
18 and we get lost because depleted uranium is the
19 problem right now -- is this is about unique waste
20 streams. It is about an issue with the regulation in
21 that 61.55(a)(6) for unique waste streams, which is a
22 much bigger set than just depleted uranium
23 potentially.

24 FACILITATOR CAMERON: Good point, David.

25 MR. ESH: So there are arguments about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 depleted uranium. I understand those arguments. But
2 we still have to do this other piece, regardless of
3 what is decided about depleted uranium.

4 FACILITATOR CAMERON: Thank you. That's a
5 good segue for in a couple of minutes getting back on
6 agenda because we do have a discussion of that. Let's
7 close this discussion with asking for an answer. Does
8 the approach, interim approach, described by Larry
9 Camper alleviate the concerns? And we will go to
10 Felix and Diane.

11 MR. DORNIFE: Yes, I believe so. I mean,
12 I believe it is going to be handled by the agreement
13 states. Regardless of whether there is a number in
14 the rule or not, that is how it is going to be
15 handled.

16 FACILITATOR CAMERON: Okay.

17 MR. DORNIFE: But I have a related
18 question -- I don't know if it is going to be covered
19 later -- that I would like to throw on the table for
20 consideration. For those states that may or may not
21 meet all of the technical requirements for part 61, is
22 there a need to have that analysis performed for
23 purposes of this rule?

24 FACILITATOR CAMERON: What you are saying
25 is, are there some states that perhaps aren't meeting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the existing requirements of part 61 or --

2 MR. DORNSIFE: Well, they weren't licensed
3 under part 61. You know, they were licensed under a
4 "agreement state equivalent," which in some cases was
5 established before part 61 even went into effect.

6 FACILITATOR CAMERON: Bill, I am going to
7 put that --

8 MR. DORNSIFE: There is some discussion
9 out there. I mean, there is some belief that there
10 are certain technical requirements in part 61 that if
11 they had to go through a new evaluation under part 61,
12 that the site would not be acceptable.

13 Now, my question is, is that as part of
14 this rulemaking something that either needs to be done
15 or should be done?

16 FACILITATOR CAMERON: I am going to put
17 that in the parking lot for when we get to
18 compatibility because I think it brings up the whole
19 review of agreement states through IMPEP.

20 Let's go to Diane and Felix. Diane?

21 MS. D'ARRIGO: I wanted to ask if states
22 really had the authority to exclude unique waste
23 streams. You know, I know that there are emergency
24 access provisions that can require facilities to take
25 waste either from out of compact or -- yes, I guess it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be out of compact. But do states have the
2 authority to limit what goes into the facilities?

3 FACILITATOR CAMERON: Okay. There's a
4 question on state authority. Does anybody from the
5 NRC want to provide an answer to that? Okay.

6 MR. CAMPER: In my own mind, Diane, that
7 is a very interesting question. That is a question I
8 have been pondering of late. I am not prepared to
9 give you an answer at this point in time because I
10 have to really have a chance to talk to OGC about it.

11 Duncan White will be here this afternoon.
12 He is going to talk about compatibility. And perhaps
13 that might be a question we could defer to him. And I
14 will try to alert him to that question so maybe he can
15 speak to it more thoroughly.

16 MS. D'ARRIGO: But previously you were
17 just saying that it is up to the states if they are
18 going to allow this in or not. And so I want to know
19 whether they really have that right.

20 MR. CAMPER: These sites are licensed by
21 the states. So your first emphasis of regulatory
22 authority is the state. Now, when you start raising
23 questions about states restricting -- I mean, states
24 have already in certain cases restricted access in
25 their sites to certain classes of waste. They have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 done that.

2 But I guess those kinds of questions
3 depend upon the circumstances and depend upon what
4 types of legal challenges might be posed. I think you
5 are asking a very interesting question and a very
6 complicated question. I'm sorry I am not prepared to
7 speak to it right now.

8 FACILITATOR CAMERON: Okay. And you are
9 going to try to get more information on this. I think
10 it's going to be discussed again in the compatibility
11 agenda item, Diane. But certainly the Utah moratorium
12 goes right to the heart of the question. And this
13 review that the NRC does of agreement state programs
14 under what is called IMPEP goes to the heart of the
15 question, too, in terms of what the state can do. So
16 we are going to get to that.

17 Felix? And then we will go to Richard.
18 And then we will go back on agenda.

19 MR. KILLAR: Yes. I just wanted to kind
20 of bring the conversation back to what I consider a
21 reality and maybe more along the lines of what Mike
22 was talking about earlier, Mike Ryan was talking about
23 earlier.

24 When this rulemaking started, the concern
25 was large quantities. And we had a big discussion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 yesterday of the significance. But it is not
2 significant. It is really large quantities because we
3 are disposing of small quantities routinely. And we
4 need to continue that process.

5 We are in the process of decommissioning
6 sites that were used for the weapons programs over a
7 number of years, both through the DOE as well as the
8 commercial sector, that has depleted uranium. If we
9 end up in an impasse in this and we stop having the
10 ability to dispose of that, we stop that cleanup of
11 those decommissioning of those facilities.

12 So in my mind, it is a lot better to have
13 that stuff in the ground and worry about it a million
14 years from now than it is to have it sitting there,
15 continuing to rust, deteriorate, what have you,
16 because you have no place to dispose of it.

17 So let's go back and start to talk about
18 reality versus some technical, frivolous arguments and
19 stuff. So I think that we need to look at what is
20 going on now and really focus on the big picture about
21 the reality when we are getting into large quantities.

22 And, as reality, large quantities, that is
23 not going to happen for a good number of years. DOE
24 is just in the process of starting up their
25 de-conversion facilities. The commercial sector is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just in the process of building their facilities. And
2 so we are starting to accumulate some of these
3 quantities. We have not really begun to dispose of
4 large quantities.

5 So I think we need to talk about reality
6 of today versus what is going to be four or five or
7 six years from now.

8 FACILITATOR CAMERON: Okay. Thank you,
9 Felix.

10 And we will go back to Diane for a final
11 comment. Richard, final comment view from the state,
12 at least the State of South Carolina, on some of these
13 issues?

14 MR. HAYNES: Well, I wanted to respond to
15 Diane's. And it's strictly from the State of South
16 Carolina. I think our position is yes, we can and we
17 would feel that we have the authority to regulate or
18 eliminate or allow for disposal any waste stream, not
19 just unique. If we felt like it wasn't appropriate
20 for the facility, we could do that.

21 Having said that, that is an appealable
22 decision. I mean, of course, if the company and/or
23 the public can appeal that decision, it would play out
24 in the legal battle at that point. But that is our
25 position.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. D'ARRIGO: So is that authority based
2 on state authority or the fact that you are in a
3 compact?

4 MR. HAYNES: I think it is both.

5 MS. D'ARRIGO: Okay.

6 MR. HAYNES: The compact law has authority
7 over that issue, too. Yes, you are right.

8 FACILITATOR CAMERON: Okay. Thank you.
9 That takes care of the interim issue. We are going to
10 revisit --

11 MR. YEAGER: One more comment based on
12 what Felix said.

13 FACILITATOR CAMERON: Go ahead, Mark.

14 MR. YEAGER: I'm sorry. It is just real
15 quick. One of the times when Barnwell was going to
16 close down when it finally closed outside compact
17 waste, there were regulations proposed for interim
18 storage. As a matter of fact, there were a lot of
19 agreement states that went ahead and implemented
20 interim storage regulations.

21 So as far as the immediate need, I
22 understand where you are coming from there. There are
23 projects where waste is accumulating. But it's not
24 like this waste and these issues haven't been there
25 for decades. So it might be a situation for you that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you might have to go back to some things that have
2 already been addressed within the regulatory framework
3 where you are working as far as just interim storage
4 while you are waiting for resolution of the problem.

5 I know that is not what you want to hear.

6 You want to get it from point A to point B. But
7 there might be a place in between that you are going
8 to have to live with until things are resolved.

9 FACILITATOR CAMERON: Okay. Thank you.

10 Thank you, Mark.

11 We are going to go back on agenda now.
12 And we have Karen Pinkston with us to tee up the
13 issues with site-specific geochemistry. Go ahead,
14 Karen.

15 ISSUE 1.5: MODELING OF URANIUM GEOCHEMISTRY

16 IN A SITE-SPECIFIC ANALYSIS

17 INTRODUCTION

18 MS. PINKSTON: Okay. So I will be
19 speaking about site-specific geochemistry and some
20 background on the issue. Uranium and its daughter
21 radionuclides produced through the decay of uranium
22 move through the environment at different rates
23 depending on the geochemical conditions and
24 concentrations present.

25 In the screening analysis performed by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NRC for the disposal of depleted uranium, the
2 geochemistry was treated as epistemic or
3 lack-of-knowledge uncertainty to account for different
4 geochemistry conditions at a range of sites. This
5 uncertainty could be better constrained in a
6 site-specific analysis at a particular site, though.

7 The results of the NRC analysis suggest
8 that the geochemical conditions, such as the moisture
9 state of the system, the pH, the carbonate
10 concentration, and the Red-Ox state, may be key for
11 the safety of near-surface disposal of significant
12 quantities of depleted uranium.

13 The environmental mobility or the
14 potential for the radionuclides move through the
15 environment from the waste is a function of both how
16 much is released from the waste and how quickly it can
17 move through the subsurface.

18 The amount of release from the waste
19 depends on the solubility of the radionuclide, the
20 amount of leaching, and the Red-Ox chemistry. And
21 after the radionuclides have been released from the
22 waste, how fast the uranium and its daughter
23 radionuclides will move through the environment is
24 primarily a function of how much the radionuclides are
25 absorbed onto the soil, although colloids could also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 affect the uranium transport.

2 So the release and transport of uranium
3 can be limited by its solubility. If the
4 concentration of uranium in water exceeds the
5 solubility limit, it will precipitate out and become
6 immobile.

7 The solubility of uranium varies strongly
8 with pH, the oxidation state, or whether it is in an
9 oxidizing or reducing environment, and the carbonate
10 concentration. These properties can vary
11 significantly from site to site but can also vary
12 significantly within a particular site.

13 So this graph on this slide Dave Esh
14 referred to yesterday. And what this is depicting is
15 estimated travel times for uranium to travel a
16 distance of 100 meters in the subsurface. And travel
17 times are shown for three different kinds of soil:
18 sand, loam, and clay.

19 These estimated travel times were
20 calculated base on the data provided in the Sheppard
21 and Thibault compendium of KD values that Dave
22 described yesterday and using the equation and
23 assumptions shown on the slide.

24 And in this graph, the right and left
25 edges of these bars, the two edges, correspond to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maximum and minimum KD value reported in the
2 literature. And the bar in the middle there
3 corresponds to the geometric mean of the literature
4 values.

5 Obviously the exact travel time is highly
6 dependent on the assumed groundwater flow rate, which
7 in this case was one meter per year. But the general
8 trend shown in the graph will hold true, regardless of
9 the site-specific groundwater flow rate.

10 As you can see in this graph, the
11 calculated travel times range from around 100 to
12 around a million years for sand and loam soils and
13 from 10,000 to 100 million years for clay.

14 So not only were there differences between
15 the different kinds of soil with travel times through
16 clay being much longer because of clay being able to
17 much better absorb the radionuclides, but also there
18 were significant differences in expected transport
19 times, even within soil of the same type.

20 So some of the key considerations related
21 to the modeling of the geochemistry include the effect
22 of oxidation reduction potential, pH, and carbon
23 dioxide or carbonate concentration or release.

24 The modeling of spatial and temporal
25 differences in geochemistry, the differences between

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 near-field and far-field chemistry, the concentration
2 of uranium and depleted uranium and in the vicinity of
3 any depleted uranium that is disposed of in
4 significant amounts will be much higher immediately in
5 the vicinity of the waste and DU than further away in
6 the environment. And this could affect the behavior
7 of the system. Finally, site-specific differences in
8 soil properties are important to be considered.

9 So NRC staff is seeking public feedback on
10 considerations for developing criteria or guidance for
11 geochemical parameters and site-specific analyses.
12 And although my slides focused primarily on uranium,
13 some of the daughter radionuclides of uranium also
14 have similar phenomena of having behavior that is very
15 dependent on site-specific conditions present. So any
16 input on the daughters would also be appreciated.

17 FACILITATOR CAMERON: Okay. Thank you
18 very much, Karen. And if you could join us at the
19 table again?

20 Does our trio of experts, anybody have
21 anything on that? Peter?

22 MR. BURNS: On the site variability slide
23 you showed, there is an interesting factor there or an
24 interesting observation that I would have made had it
25 not been on the slide. And that is that after 100

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 years, assuming a flow rate of one meter per year, the
2 uranium can move 100 meters. That is one of the
3 scenarios that is shown there.

4 That is, of course, no surprise because if
5 it is an oxidizing environment, the uranium will be
6 dissolved. So it will move just as fast as the
7 groundwater unless it is being absorbed and it travels
8 mostly through a sandy soil. It won't be absorbed.

9 I would say the one meter per year is not
10 a very good number. It leads to kind of a misleading
11 scenario there on the site variability slide because
12 we are talking not about placing uranium below the
13 groundwater table but shallow burial above the
14 groundwater table. And just go on outside and find a
15 sandy soil and dump a few buckets of water on it, and
16 you will see that it infiltrates a heck a lot faster
17 than one meter per year. It takes about four or five
18 minutes for it all to vanish into the subsurface.

19 This was experienced at Hanford. BX-100
20 tank farm, there was an accident in the 1950s where
21 approximately 3,000 kilograms of depleted uranium was
22 spilled onto the surface of the ground. It was a case
23 where the tank overflowed. And this 3,000 kilograms
24 of depleted uranium vanished into the subsurface
25 faster than it could be cleaned up, I guess you could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 say.

2 And there have been a great deal of
3 studies about that. It moved down to at least 125
4 feet below the tanks really quickly, in a matter of
5 some few years, and seems to be largely still there at
6 about 125 feet, precipitated in a variety of minerals
7 and so on.

8 The point I would make is the travel
9 through the vadose zone, the unsaturated zone, is
10 likely to be much faster than shown there. And once
11 the uranium has gotten into the groundwater, well, it
12 is game over, really, because how are you going to
13 remediate that situation?

14 FACILITATOR CAMERON: Thank you, Peter.

15 David?

16 MR. ESH: Yes. I would add to that. I
17 understand the comment. It is a good comment. When
18 you have a release in the vadose zone and it's
19 saturated, gradient is one, it moves very rapidly.
20 But in many of our disposal problems that we evaluate,
21 you are looking at very low infiltration rates and not
22 saturated conditions, which can give you a significant
23 travel time through the vadose zone in some cases.

24 Then Karen's slide was mainly to
25 illustrate transport in an aquifer, a saturated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aquifer, a distance of 100 meters. Generally for most
2 of our problems, when you do that, analyses of
3 resident receptor, they are at the edge of the
4 disposal facility boundary. So you have some
5 transport distance from the release until it gets to
6 the receptor location.

7 So it is mainly to illustrate the
8 variability that you can get from different
9 geochemical conditions. It's not meant to apply to a
10 specific site or for a specific problem. It is just
11 to communicate the concept.

12 Your comments are well-taken about the
13 effects whenever it is saturated and how that can
14 impact the transport in the vadose zone.

15 FACILITATOR CAMERON: So that the factors
16 that Peter is raising would be something that would be
17 considered in doing the site-specific performance
18 assessment?

19 MR. ESH: The things that Dr. Burns has
20 raised are things that we normally expect to be
21 considered in the site-specific analyses that are
22 done, yes.

23 FACILITATOR CAMERON: Okay. Thank you.

24 Yes? Go ahead, Peter.

25 MR. BURNS: Well, I would add to that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the situation in the vadose zone becomes much more
2 complicated in terms of modeling if one assumes a
3 significant climate variability over, say, 10,000
4 years, where you could no longer anticipate an
5 unsaturated or very slow flow.

6 I wanted to add, too, that under key
7 considerations, we have the Red-Ox potential pH, CO2
8 concentration on release. Those are clearly very
9 important as are the minerals downstream that the
10 depleted uranium would interact with.

11 I would add to that list co-contaminants
12 from the waste. In particular, I am concerned about
13 organic molecules of a variety of sorts, like oxalate,
14 acetate, or whatever that can complex uranium and make
15 it much more soluble than it could be in their
16 absence. And such complexation could, at least under
17 some conditions, pretty much eliminate sorption
18 downstream as a retardation mechanism.

19 FACILITATOR CAMERON: Thank you, Peter.

20 Bill, Bill Dornsife?

21 MR. DORNSIFE: Yes. Just an observation
22 on this geochemistry issue. Depending upon the site
23 location and the importance of the pathway, meaning
24 water pathway versus radon pathway, a more soluble
25 waste form, for example, in an arid environment, where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 erosion is the problem, could be advantageous because
2 you have less uranium there to create the radon source
3 term.

4 So I am wondering, is the state of the
5 modeling sufficient to take that into consideration?
6 You know, you are reducing, potentially reducing, the
7 source term to reduce a pathway.

8 FACILITATOR CAMERON: To Peter, Karen?
9 Karen, do you want to address that?

10 MS. PINKSTON: Yes. In the screening
11 analysis that the NRC did, the source term was allowed
12 to -- any water that came in could leach the
13 radionuclides out. Then they weren't available for
14 transport of radons. So that was a little bit of a
15 reason that the wet sites had less of a radon issue,
16 was that the radionuclides had moved downstream
17 through the subsurface.

18 So you would expect in a very specific
19 performance assessment that it be modeled, that all of
20 the phenomena that would affect the release and
21 transport would be considered. And so you would be
22 considering sort of a realistic depiction of what is
23 happening with the source. So if you were leaching
24 some of the things away, then you wouldn't have to
25 consider them for radon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: And, Peter, on that
2 issue? Thank you, Karen.

3 MR. BURNS: So it is a strange issue we
4 are discussing because we are saying if we manage to
5 wash away or if all of the radionuclides, the depleted
6 uranium gets washed away in groundwater, well, there
7 is no radon problem anymore. Well, that seems
8 obvious.

9 I think from the -- this could be
10 considered a controversial statement, I suppose, but
11 radon is a short-term problem for the people who
12 happen to be there and impacted by radon at that time.

13 Groundwater contamination is an extremely
14 long-term problem. And once it happens, it is a heck
15 of a job to clean up. And you can contaminate vast
16 aquifers potentially of the United States. Say, a
17 quarter of the country's groundwater could be
18 contaminated by a site that leaked a great deal. So
19 to me, radon is important, but groundwater is the
20 thing that will impact future generations for
21 centuries or millennia if contamination happens on a
22 large scale.

23 FACILITATOR CAMERON: And, Bill, do you
24 want to say anything to that observation?

25 MR. DORNSIFE: I understand what you are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 saying, but, you know, when we are playing this model
2 game, that just isn't true. When you consider
3 erosion, if you have naked DU, you are going to have a
4 potential huge exposure to future generations at that
5 site.

6 And I am not suggesting in any way that we
7 deliberately make the waste more mobile. It's just
8 are there sufficient modeling capabilities to take
9 that into consideration?

10 FACILITATOR CAMERON: Peter, do you want
11 to address that perhaps subtle distinction that Bill
12 is making on this or maybe it's not subtle? I don't
13 know.

14 MR. DORNSIFE: I am never subtle.

15 MR. BURNS: Well, erosion occurred
16 primarily due to water presumably. So if it is a
17 highly soluble waste form, you know, it eroded as
18 well.

19 I don't know if that answers your
20 question, but in an environment where you are going to
21 erode away all of the overburden that has been placed
22 on the ways to protect it, I don't think you can
23 expect the waste to stick around for any time at all
24 once it has been exposed.

25 FACILITATOR CAMERON: Karen has something

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to say on that.

2 MS. PINKSTON: I just wanted to clarify
3 that I wasn't trying to imply that we thought it would
4 be a good idea for all of the DU to wash away
5 immediately into the groundwater.

6 So I was just trying to raise the point
7 that when you do PA modeling, we would want to
8 accurately capture what is going on with the source,
9 including both leaching and diffusion of radon, and
10 that you can get this phenomenon.

11 You know, our sites that were mediumly wet
12 showed up in our model as being less of an issue for
13 the reason that if it is very dry, all of the dose
14 comes through radon and you get a large dose through
15 radon. If it is completely wet, it all immediately
16 washes in the groundwater. And you get a large dose
17 from the groundwater.

18 If your source is filling the dose between
19 the two pathways, you can get a lower dose for both
20 people.

21 FACILITATOR CAMERON: I know the
22 commissioners will be glad to hear that we weren't
23 suggesting that.

24 MR. ESH: Just so we're clear, we want the
25 impacts from both radon and groundwater to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 acceptable, period. We're talking about extremes
2 here, different cases, and debating them. But the
3 bottom line is it has to be safe for all pathways.

4 FACILITATOR CAMERON: And Felix? And then
5 we will go back to Peter. Felix?

6 MR. KILLAR: I just had a question. You
7 know, what we are focusing on here is the impact of
8 the waste coming into direct contact with the
9 groundwater. When you look at doing your performance
10 assessments and you look at your modeling and what
11 have you, I would think somewhere along the line, the
12 liners that are on these trenches as well as the caps
13 on these trenches come into play.

14 And so part of the question is the
15 geochemistry of the liners and the longevity of the
16 liners and back to the engineered barriers we talked
17 about a little bit yesterday. Can you talk a little
18 bit about that as far as what the NRC's expectations
19 are for the geochemistry on the liners?

20 MR. ESH: Yes. That's a good comment.
21 What I would say is that we have a couple of issues.
22 We have short-term engineered controls that you may
23 put in place, say, in a traditional commercial
24 low-level waste facility. And what you may try to do
25 with those sorts of controls and barriers may be a lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different than what you would try to do for a
2 long-term problem.

3 So in the short term, you can have
4 probably a much higher degree of confidence to be able
5 to isolate material hydrologically through the use of
6 engineered barriers of various types, whether it's
7 cementitious vaults or covers or whatever.

8 There is a lot of experience on those. We
9 continue to do research on them. We have a research
10 group that evaluates things like clay covers,
11 engineered covers, cementitious materials.

12 When you move to the longer-term problem,
13 it becomes maybe in some regards more of a materials
14 science-type problem, like Dr. Burns talked about.
15 Then you're really fighting Mother Nature when you are
16 trying to put a resistive barrier in and use it for
17 the long term.

18 What we find is that Mother Nature doesn't
19 like it when you mess with her environment. Then she
20 tries to change those barriers and make them
21 ineffective.

22 So if you can engineer your waste to be
23 compatible with your disposal system, that is
24 certainly the way you want to go for if you are trying
25 to deal with longer-term issues.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But yes, we have some guidance with
2 respect to engineered barriers that we have done more
3 recently than our low-level waste regulations for our
4 incidental waste reviews. In NUREG-1854, there is a
5 section there on engineered barriers and also in our
6 decommissioning guidance in NUREG-1757. We have some
7 guidance on engineered barriers there.

8 Generally we expect people to be able to
9 support the level of performance that they want to try
10 to take credit for in their analyses. And they
11 support that through modeling, experiments,
12 observation of analogues, all sorts of things.

13 We heard some discussion yesterday about
14 unvalidated modeling, that sort of thing. Well, in
15 performance assessment, I don't think anybody here
16 would say that we validate performance assessment
17 models in the traditional sense. You are doing a
18 projection in time, very long projections into the
19 future. You cannot validate them in the traditional
20 sense.

21 The language we like to use is you develop
22 model support for it. And that usually has multiple
23 lines of support of different types. We have used
24 that language in our high-level waste program, which
25 applies for very long times. And we have been using

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that language in some of our other programs.

2 So that is a kind of a long, long answer
3 to your pretty short question.

4 FACILITATOR CAMERON: Okay. Thanks, Dave.

5 Michael? And then we'll go to Peter.

6 Mike?

7 MR. RYAN: Thanks. David, you really
8 summarized what I as going to ask about, which is that
9 the other guidance -- you know, you work very hard on
10 some waste determinations, which are unique and have
11 long-lived components in them.

12 I think to the extent you can, if you can
13 exemplify in the guidance for uranium the same kind of
14 detail and thinking process that folks should go
15 through, that would be a real asset to the guidance
16 that goes with the rule because then folks can have
17 the framework and do I need to think about, for
18 example, changing the chemical or the physical form of
19 the waste itself in order to be better suited for a
20 given environment? That is a possibility you can
21 always think about.

22 I may go to a different chemical form or
23 admix it with some other chemicals that help it be a
24 better immobile species over the long haul. I mean,
25 the short haul, the site is going to do the work, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then the long haul, uranium is going to be uranium
2 forever.

3 MR. ESH: That is a difficult balance and
4 a challenge that you are probably well aware of --

5 MR. RYAN: Absolutely.

6 MR. ESH: -- to provide that information
7 and still encourage the people to do their innovative
8 and flexible approaches because we don't have all of
9 the answers.

10 MR. RYAN: Yes.

11 MR. ESH: We try to provide our level of
12 knowledge that we have. And we hope that people go
13 out there, advance the level of knowledge, and still
14 have the flexibility to come in and use that.

15 MR. RYAN: And, again, I appreciate I am
16 asking to climb a tall hill here. But to the extent
17 that you can put guidance in there that gives readers
18 or users of the guidance in sites as to what
19 strategies, for example, you think are good or what
20 particular technical approaches you think makes sense
21 under various circumstances you might outline, that is
22 very, very helpful, I think, to practitioners to get
23 started.

24 So thanks.

25 FACILITATOR CAMERON: Thank you, Mike.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Peter?

2 MR. BURNS: Most of what I was going to
3 say I think has been covered in the last two or three
4 comments. But I was going to say, Karen, that we
5 never thought that you really wanted the waste all to
6 wash away.

7 I was a little confused with one of your
8 comments. I suspect in your models, the reduction in
9 radon emanation from areas of high water flow rate is
10 not due to the uranium being dissolved and flowing
11 away, but, rather, it is due to the radon being
12 dissolved and flowing away, instead of coming up
13 through the vadose zone and being emitted that way.
14 Maybe you can comment on that.

15 I also just want to make a point again
16 that I have made yesterday that the geochemistry that
17 one has at a disposal site should be compatible with
18 minimizing mobility of depleted uranium once it is
19 released from the waste form and the waste form should
20 be compatible with that geochemistry.

21 This causes a problem if you have three or
22 four sites that exist and that is where you are going
23 to put the waste because I was putting the cart ahead
24 of the horse, of course.

25 That perhaps can be addressed with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 engineered barriers and so on, but the logical
2 approach if one were starting fresh, from scratch, is
3 to just think a little bit about the waste forms and
4 think a little bit about the geology and look at
5 natural analogues and put it somewhere that it is not
6 going to move in any considerable way.

7 FACILITATOR CAMERON: Okay, Karen.

8 MS. PINKSTON: So the reduction in radon
9 at sites that are really wet, I think there are two
10 factors that affect this. And I'm not sure how much
11 each factor -- like I don't know what percent each
12 factor is responsible for, but the one factor is
13 diffusion through saturated porous media is much
14 slower than when it is arid and the pores are empty
15 and the radon can move through the empty pores much
16 more quickly.

17 Then the second factor was the issue we
18 talked about about if you leach out some of the
19 uranium and any of the other radionuclides in the
20 decay chain above radon, would it reduce the amount of
21 radon that emanates because the parent is no longer
22 near the surface for the radon to emanate from?

23 I would think that radium is probably the
24 most soluble of the radionuclides in the decay chain.

25 It might be the one that is leaching the most, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that is my guess.

2 We did include a Henry's law type of thing
3 in our model. So that the radon was able to partition
4 through, between the gas and the aqueous phase in wet
5 sites so more of it would be moved to the aqueous
6 phase.

7 FACILITATOR CAMERON: Okay. Thank you,
8 Karen.

9 Arjun?

10 MR. MAKHIJANI: Yes. I just want to
11 correct the record regarding this validation question.

12 I took my validation comment directly from the SECY
13 paper. So you say you need validation. And that is
14 why I brought up the thing. And today you are saying
15 you don't need that validation in the traditional
16 sense.

17 I would just read the sentence into the
18 record here, "Refinement of the model would be
19 necessary if it was to be used for licensing decisions
20 and rigorous validation would be needed."

21 MR. ESH: The words are for a
22 "site-specific licensing decision." It is very clear.

23 MR. MAKHIJANI: That's right. And if you
24 need validation of the model, then you validate the
25 model. I understand that the word "validation" can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mean different things in different contexts.

2 You are talking about 10,000 years in the
3 future. Validation procedure will be different than
4 if you are talking about something that you can go to
5 a lab and verify and validate in that sense. I
6 certainly understand that. I am a scientist, too,
7 like you.

8 MR. ESH: I understand the comment. You
9 need different levels of confidence in your models
10 depending on the use of them.

11 MR. MAKHIJANI: Yes. It's just a question
12 of whether we're shifting terms as we go along. So
13 you use the term "validation." I use a term out of
14 your SECY paper. And then today you say, "We are not
15 going to validate."

16 So if you can just settle the terms? It's
17 like this class A stuff. It's everything is always
18 shifting. And this makes it very, very unclear and
19 very confusing.

20 MR. ESH: I understand. I think the term
21 was used very clearly in the SECY paper and you first
22 used it out of context.

23 FACILITATOR CAMERON: Okay.

24 MR. MAKHIJANI: I do not believe I did. I
25 think I said that your model was not validated because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 when we called your office, you refused even to send
2 us the model so we could look at it.

3 It is an informal model that has not been
4 reviewed from the outside. There has been no rigorous
5 external so far as I understood from the NRC or my
6 librarian understood from the NRC. This is a model
7 that -- well, I won't characterize it further, but I
8 think it is not a formal approved model, which I think
9 should have been done before you made a recommendation
10 to the NRC because the extent of this model -- yes.
11 Everybody should be allowed to finish. And I will try
12 to respect that, too.

13 MR. ESH: Yes. I --

14 MR. MAKHIJANI: Excuse me. It has been
15 expressed here a number of times that a million-year
16 modeling for shallow land burial doesn't make a whole
17 lot of sense. And you did that. Now, the whole
18 context of how this thing was done and how it was sent
19 up to the NRC and how the NRC actually set us on this
20 course is a very uncomfortable thing.

21 I try to be respectful of your context.
22 If you don't think that I was respectful of your
23 context, we can go back to the record and fight over
24 it. But I don't think it is sensible to cast stones
25 across the table like this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I used your terms. Today you shifted your
2 terms and said, "We don't validate models in the
3 traditional sense." Are you saying that site-specific
4 models will be validated or will not be validated?

5 MR. ESH: I think I was very clear. When
6 you are talking in the field of performance
7 assessment, you are not able to validate in the
8 traditional sense, period. Any practitioner in
9 performance assessment knows this.

10 And what I said was in this instance, we
11 developed a level of confidence in the calculation
12 that was suitable for the decision. It was
13 pre-decisional information. It's not a licensing
14 decision. And all information that's developed to
15 support the rulemaking will be documented, will be
16 available for public comment and review.

17 FACILITATOR CAMERON: And, Arjun, we do
18 have your comment from yesterday.

19 MR. MAKHIJANI: I am still unclear. Are
20 you going to require -- here you say in the context of
21 licensing decisions, rigorous validation would be
22 needed. As I heard you say now in the context of
23 performance assessment for long times, validation is
24 not the right term to use.

25 MR. ESH: I clarified it. And the SECY

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 paper is not our licensing documents. In our
2 licensing documents, it will be clear what we expect
3 with respect to model confidence.

4 FACILITATOR CAMERON: Okay. I think we
5 need to stop there and get on with the agenda. I
6 think it is clear. I think Larry and his staff have
7 heard what your concerns are about the technical
8 analysis and the decision.

9 Do you want to say something real brief?

10 MR. CAMPER: I would.

11 FACILITATOR CAMERON: Go ahead.

12 MR. CAMPER: This has come up two days.
13 And so I just would like to clear Arjun that I
14 understand my staff did try to return your call to you
15 three times. They were not responded to.

16 The information that your organization
17 raised is not subject to FOIA. It is pre-decisional.

18 Therefore, there is no obligation to provide that
19 information. But, as Dave said, any information that
20 is in support of this rulemaking will be FOIA-able and
21 will be public information.

22 MR. MAKHIJANI: We have not --

23 MR. CAMPER: So I am sorry there is
24 confusion around that. We have tried to communicate
25 with you as to that particular request.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: We have not filed a
2 Freedom of Information Act request. We called your
3 office to see the model. It was refused. And there
4 the matter rests as of now.

5 MR. CAMPER: And what I am saying now is
6 we have, the staff has, tried to reach you three times
7 to convey to you that the information is not required
8 to be provided. It is not subject to FOIA. It is
9 pre-decisional information.

10 I am just clarifying that we tried to
11 communicate that with you. That is all I am saying.

12 MR. MAKHIJANI: I think it is
13 objectionable that such a huge decision was made for a
14 million tons of depleted uranium to set us on a
15 particular course evaluating shallow land burial and
16 the underlying documentation is not available to the
17 public.

18 FACILITATOR CAMERON: Okay. There are two
19 distinct issues here. And I think the issue that
20 Arjun brought up about the use of the data to support
21 the decision to go to the Commission, that is one
22 issue.

23 This whole business about the availability
24 of GOLDSIM providing a player or more than that, that
25 is an ongoing discussion. And I think that it would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 behoove both the NRC and Arjun to sit down offline to
2 see what access there might be to the player or
3 whatever, but I don't think that we need to argue that
4 out here. And it should be done in as collegial a way
5 as possible within the confines of what the Agency's
6 requirements are.

7 So, with that, Bill, are you going to
8 start something?

9 MR. DORNIFE: No. I just have a
10 question.

11 (Laughter.)

12 MR. DORNIFE: I just have a quick
13 question to better understand these pathways. In your
14 analysis, what radionuclide dominated the groundwater
15 pathway? And I assume the concentration of radium
16 dominated the radon pathway.

17 MR. ESH: Yes, you are correct about the
18 radon. It's the radium that drives that, obviously,
19 but the radium comes from the uranium.

20 In terms of the water pathways, it was a
21 variable in the simulations because the geochemistry
22 varies in the simulations. Uranium can cause
23 significant impacts. If you have animal pathways,
24 lead-210 shows up a lot in the poultry-related
25 pathways, chickens and eggs primarily. And that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because there seems to be a real sparsity of
2 information related to the transfer factors for lead
3 to chickens and eggs, although whenever I was working
4 on it, I did find a few articles from Nigeria that
5 people were looking at lead to --

6 MR. DORNSIFE: How about when a water
7 pathway shows up other than uranium? What is the
8 dominant radionuclide?

9 MR. ESH: Water pathway other than --

10 MR. DORNSIFE: For the water pathway, yes.

11 MR. ESH: I'm trying to think here.
12 Lead-210, which can end up in the animal pathway,
13 obviously gets there in the water pathway and can
14 cause some water pathway exposures, too.

15 MR. DORNSIFE: Polonium?

16 MR. ESH: Pure drinking water is what
17 you're asking, right?

18 MR. DORNSIFE: Polonium is not --

19 MR. ESH: Not plant and animals but would
20 start with ingestion of water, right?

21 MR. DORNSIFE: Yes. I would have thought
22 polonium because it has the lowest drinking water
23 limit would be --

24 MR. ESH: Yes. I believe we saw polonium.
25 I don't know. I would have to go back and look what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the specific breakdown was, but --

2 MR. DORNIFE: Well, I guess just to
3 quickly close out, you know, again, there is an issue
4 there. If the water pathway-dominant radionuclide is
5 below radon, you know, then it's potentially depleted
6 with the radon pathway.

7 MR. ESH: I understand what you are
8 getting at.

9 MR. DORNIFE: And does the model do that?

10 MR. ESH: Yes. What we did in our
11 calculation, which we keep talking about our
12 calculation, but I don't see that our calculation is
13 the 90 percent of this decision process --

14 MR. DORNIFE: I understand. I guess I am
15 talking more are there models that can represent that?
16 I mean, if you are gassing off all of the radon,
17 there is nothing left for the water pathway.

18 MR. ESH: I think you owe yourself when
19 you are doing this type of calculation to be keeping
20 track of your inventory and its daughters and where
21 they end up in the process. So if you are leaching
22 something out of your source area, then obviously you
23 shouldn't be calculating a radon emanation from it
24 when it is no longer there. You should keep track of
25 where everything is, where it is partitioned

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 throughout your system, and estimate the impacts
2 accordingly.

3 FACILITATOR CAMERON: Okay. Thank you.
4 Thank you, all. Audience, anybody? Question?
5 Comment?

6 (No response.)

7 FACILITATOR CAMERON: Okay. Let's take a
8 break until --

9 MR. FUHRMANN: I am Mark Fuhrmann. I am a
10 geochemist in the Office of Research at NRC.

11 Just a comment, taking up on what Mike and
12 Peter had said a few times about chemical
13 compatibility of the waste form itself. And here with
14 these very large volumes of waste, some coming from
15 new plants that haven't been built yet, it is sort of
16 an opportunity to engineer that waste form to
17 eliminate a lot of uncertainty that we see, which is
18 in the leachability.

19 And here if we, instead of going to an
20 oxide, maybe go to a phosphate, where we know what the
21 solubility is and it is very limiting, that may give
22 us very great opportunities in better, controlling,
23 long-term releases of this type of waste.

24 FACILITATOR CAMERON: Thank you. That is
25 from our Office of Research. Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Let's take a break, come back at 10:30.
2 That gives you about 17 minutes. And we will go to
3 radon and other unique waste streams.

4 (Whereupon, the foregoing matter went off
5 the record at 10:14 a.m. and went back on the record
6 at 10:38 a.m.)

7 FACILITATOR CAMERON: I think Larry has a
8 clarification, but I want to make sure that Arjun and
9 everybody are here for that. So why don't we get
10 started? And then we will hold that clarification.
11 Oh. Arjun is here, and Diane is here. So, Larry, go
12 ahead. Everybody is here.

13 MR. CAMPER: I wanted to come back to the
14 issues that were discussed shortly before the break
15 with regards to the analysis that the staff use and
16 use of the GOLDSIM and so forth and so on.

17 Arjun and I had a very nice discussion
18 during the break. Thank you for that. I appreciate
19 that.

20 What we are going to do is we are going to
21 confer with the Office of General Counsel more closely
22 on this question. I mean, you know, some of the
23 information that is in there is, as you and I
24 discussed, "pre-decisional."

25 What we are going to do is we are going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 see, to the maximum extent possible, what we can
2 release on the work that we did, the PLAYER model, for
3 example, and other things. So we will continue to
4 have dialogue with OGC. And, to the maximum extent
5 possible, we will make that information publicly
6 available.

7 MR. MAKHIJANI: I truly appreciate that.
8 And we did have a very nice conversation. Thank you
9 very much, Larry.

10 FACILITATOR CAMERON: Great. Thank you.
11 Thank you, both.

12 Karen, are you ready to talk about radon?

13 MS. PINKSTON: I am. Okay.

14 FACILITATOR CAMERON: All right.

15 MS. PINKSTON: So I will be talking about
16 the modeling of radon in the environment in a
17 site-specific analysis. So for some background, radon
18 is present in the uranium-238 decay chain, which is
19 shown up here on this slide, and is formed as 238U and
20 its progeny decay. And, as David Esh pointed out in
21 his presentation yesterday, radon is present naturally
22 in the environment and is responsible for a large
23 fraction of natural background radiation.

24 Radon-222 has a half-life of 3.8 days.
25 And, unlike other radionuclides in the 238U decay

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 chain, radon is a gas. This causes it to have
2 significantly different environment ability than the
3 other radionuclides.

4 Radon also has daughter radionuclides that
5 are charged and tend to stick to particles and
6 surfaces so they can behave differently than radon,
7 especially inside of buildings.

8 So, unlike natural uranium ore, depleted
9 uranium has been chemically separated from its progeny
10 and consists primarily of the uranium isotopes. And
11 the daughter radionuclides are not present.

12 However, as shown in this graph, over time
13 the daughters will in-grow. But because the
14 half-lives of many of the radionuclides in the decay
15 chain are extremely long, it takes a long time for
16 radon to grow in.

17 So in this graph, it shows the amount of
18 radon that will be formed from one curie of depleted
19 uranium. As you can see, it doesn't hit its maximum
20 amount of in-growth until about one million years or
21 so.

22 So this shows a picture that we have seen
23 earlier. And, as you can see in this picture, the
24 radionuclides present in DU or any disposed-of waste
25 can move through the environment by leaching from it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that can move through the groundwater from leaching or
2 that radon and other gases can also diffuse upward
3 through the cap to the surface.

4 Once the radon has diffused to the
5 atmosphere, it can also be transported off site to an
6 off-site resident. And if a residence or other
7 structure were built directly above the disposal site,
8 the radon then could diffuse directly into the
9 basement or directly into the foundation.

10 So in determining the potential future
11 exposure to radon, it is important to consider the
12 uncertainty in the exposure scenario. The future land
13 use of the site would affect the potential exposure to
14 radon. For example, a person living on site would
15 receive a higher dose than one living off site.

16 In addition, there is uncertainty in the
17 type of structures that may be built on or near the
18 site in the future. And properties of the structure,
19 such as the size of the structure, the presence or
20 absence of a basement and the type of ventilation
21 system, could all affect exposure to radon.

22 There is also not known whether future
23 generations would routinely test for radon and install
24 radon mitigation systems in their building. Radon
25 mitigation systems are relatively simple and are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fairly effective. So if a population in the future
2 were to test for radon and install appropriate
3 mitigation systems, the potential for being exposed to
4 large amounts of radon would be greatly reduced.

5 So there are a number of significant
6 challenges associated with the modeling of release and
7 transport of radon. This is largely due to the short
8 half-life that radon has. And so this results in the
9 exposure to radon becoming highly dependent on how
10 quickly it can move to the surface and whether or not
11 it reaches the surface before it decays.

12 So small differences in the travel time
13 that it takes for radon to move to the surface can
14 result in huge differences in the amount of radon that
15 reaches the surfaces and, consequently, huge
16 differences in the dose that a person might receive.

17 So, in order for radon to be mobile, radon
18 must first get from the solid waste to the gas phase.

19 So it is important to understand the amount of
20 emanation of radon from radium in the solid waste form
21 to the gas in the porous space and the factors that
22 influence this.

23 Another considerable challenge in modeling
24 radon transport is the modeling of diffusion through
25 partially saturated porous media. This diffusion is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 highly dependent on the moisture content of the soil.

2 And it is dependent in a highly non-linear way with
3 moisture content. The moisture content of the soil
4 can vary, both temporally and spatially within a site.

5 Another challenge to modeling radon is the
6 uncertainty in the long-term performance of clay radon
7 barriers. A clay radon barrier will only function as
8 long as it is intact and the moisture content is high.

9 Any drying out of a clay layer would likely lead to
10 cracking and to the barrier no longer working as well.

11 Finally, barometric pumping can increase
12 the flux of radon from a subsurface to the surface.
13 Barometric pumping is basically due to wind blowing
14 across a site and causing suction to be pulled on a
15 subsurface and radon to be brought up more quickly to
16 the surface.

17 This effect is most pronounced in the case
18 of a building being located directly above the
19 disposal area because barometric pumping can greatly
20 increase the amount of radon that gets brought into
21 the building.

22 NRC staff is seeking public feedback on
23 specifying criteria for a developing guidance related
24 to radon. This includes methods for evaluating and/or
25 regulating the impact of radon gas exposures. We had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some discussion yesterday about whether it would be
2 appropriate to use the mill tailing standards instead
3 of a dose limit.

4 We are also interested in approaches for
5 modeling radon emanation transport and exposure
6 pathways; parameter values used in the modeling of
7 radon as it relates to the disposal of low-level
8 waste; and, finally, the consideration of societal
9 uncertainties in the modeling of radon.

10 FACILITATOR CAMERON: Thank you very much,
11 Karen.

12 Let's go to our experts. First let's go
13 to Steve Webb from Sandia. Steve?

14 MR. WEBB: Thanks. What I understand is
15 that you are just using gas diffusion or --

16 MS. PINKSTON: I believe our model was set
17 up just to have diffusion in the gas phase up to the
18 surface. However, there was the ability for it to
19 partition between, the radon could partition between,
20 the gas phase and any moisture located in the liquid.

21 There is also the convective flow downward to the
22 groundwater.

23 MR. WEBB: So it is also liquid feed
24 diffusion comes in as well?

25 MS. PINKSTON: No. We didn't include the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 upward liquid diffusion in the model.

2 MR. WEBB: I'm not sure. What is the
3 Henry's constant? Do you know the Henry's constant,
4 by any chance? I don't remember what it is because
5 oftentimes you will also have liquid phase diffusion,
6 which is high, too. One other mechanism is basically
7 heat evaporation. What they will give you is a large
8 advection component.

9 One model you might want to look at is a
10 1980 screening model Bill Jury developed. His first
11 model is for pesticides. And he has a later model of
12 buried chemicals. And what this is, near-surface
13 model.

14 I have used this in the past because what
15 I have modeled with chemical signatures from land
16 mines, which are about a foot below the surface. And
17 that is a real good screening model and with good
18 validation with it, too. So it is a real good
19 approach, and I can give you the references.

20 MS. PINKSTON: That would be helpful.
21 Thanks.

22 MR. WEBB: And, of course, what I know,
23 evaporation is highly dependent on episodic rainfall
24 preferential paths. We have used the weather as well,
25 not only adverse conditions but actual rainfall

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 events, and also, as we talked about yesterday, the
2 barriers. What you have to consider, non-uniform
3 properties, too, David. We talked about that
4 yesterday a little bit off line.

5 That's it for me.

6 FACILITATOR CAMERON: Do you have
7 questions for Steve?

8 MR. ESH: Yes. I didn't catch the 1980
9 screening model. What was the author that you
10 referred to for that?

11 MR. WEBB: Jury, Bill Jury. His first
12 model is -- this was a four-part paper. And later on,
13 like he also has a buried-chemical model. I've got
14 the references with me that I can share with you.

15 MR. ESH: Okay. One thing that we were
16 interested in hearing about from people, too, is, are
17 they aware of data sources with regard to uranium
18 and/or radon fluxes, actual measurements for lots of
19 real systems? We tried to compile that sort of
20 information as part of our work.

21 We found some with respect to radon
22 emanation, a lot of cases from bare tailings, but we
23 were very much interested in buried sources and data
24 that could be used to constrain or provide support for
25 radon modeling.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We also looked at the radon that is in the
2 environment and how that translates into exposures and
3 houses and the variability that you can get from
4 different conditions.

5 It gives you some information about how
6 the source translates into an impact, but it would be
7 much nicer if we had data sources that were more
8 constrained or more well-studied that could provide
9 you more cleanly that sort of information.

10 FACILITATOR CAMERON: Anything on that,
11 Stephen?

12 MR. WEBB: No, I don't have anything for
13 radon. No.

14 FACILITATOR CAMERON: Okay. Let's go to
15 Peter. And then we will go to Bill and Felix.

16 MR. BURNS: I just had a couple of really
17 quick comments I wanted to make. One is just for
18 information concerning the clay barriers. Perhaps
19 everybody knows, but perhaps they don't. I didn't
20 know about these things until not too long ago.

21 There are clay deposits, mostly in
22 Tennessee, that are called ball clay deposits. They
23 are small lenticular types of deposits in the
24 relatively near surface in the sediments that are not
25 compacted in the rock. And these things are heavily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mined for use as food binders and in ceramics and so
2 on.

3 They have been there over a million years
4 in the near surface. And they are pretty spectacular
5 when you go and look at them. They are essentially
6 entirely made up of clay, anywhere from 3 or 4 feet to
7 15 or 20 feet thick. And sometimes you can see them
8 in road cuts. Certainly you can see them in all the
9 different mines. So if one was looking for a
10 long-term analogue to study to see how these clay
11 barriers might persist, I would point you in that
12 direction.

13 Anyway, on to a more substantive comment,
14 I suppose, about the standards. The mill standards,
15 mill tailings, and mine tailing standards presumably
16 reflect the fact that the daughter products are
17 already all there.

18 The uranium was in secular equilibrium
19 when it was mined. And there is going to be roughly
20 the same amount of radon coming out of that as there
21 would be from a depleted uranium storage facility
22 after a million-plus years.

23 So it seems illogical that one would
24 suggest, at least at the outset, that the standards
25 for radon emissions from a depleted uranium disposal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 facility over, say, 10,000 years ought to be the same
2 as a mill tailing site, where you have dramatically
3 more radon to begin with.

4 FACILITATOR CAMERON: Karen, Dave, any
5 comments or questions, observations?

6 MR. ESH: Do you know the clay layers that
7 you are referring to, how deeply buried they are?
8 Because one of the issues that has come up recently in
9 our research group with respect to engineered barriers
10 and, in particular, buried clay layers is it appears
11 that the buried clay layers can maintain their
12 functionality when they are kept wet, basically. But
13 when they dry, they can lose their functionality. And
14 they can lose their functionality very rapidly.

15 So in Craig Benson's work, it was
16 sponsored, in part, by our research group. And we
17 have a recent report. I could give the reference for
18 people if they are interested.

19 He looked at exhuming or examining a
20 number of these engineering caps and layers, et
21 cetera, and determining what the actual performance
22 was. And what he learned was that in some cases they
23 don't perform very well.

24 There was a site in Georgia with a buried
25 clay layer where they had a two-week drought, I think.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And that two-week drought was enough. And it may
2 have had about a meter of overburden above the clay
3 layer. But that two-week drought was enough to dry
4 the clay layer and crack it. And it was no longer
5 effective hydraulically, which would probably mean it
6 wouldn't be effective as a diffusion barrier either.

7 We are very sensitive to this. We are
8 interested in covering this topic in our guidance for
9 this and our other programs. But it really highlights
10 the need to consider the episodicity of the driving
11 functions on these systems and how they may impact the
12 barriers.

13 That is why I was interested in if you had
14 some information about the depth of those very
15 long-lived clay layers.

16 MR. BURNS: I can send you some
17 publication lists, but I was involved in a research
18 project a few years ago on these clays because it
19 turns out that they are loaded with dioxins. And that
20 is a little off topic, I guess, clays loaded with
21 dioxins. They showed up in fish feed and chicken feed
22 and resulted in a lot of EPA problems with those food
23 sources and a lot of incinerated chicken and the like
24 when it was discovered.

25 My role in it was I was researching the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 origin of these dioxins. The conclusion was it was
2 natural. There was no water infiltration through that
3 clay at all in historic times. So there was no way
4 that dioxins could be carried from, say, an Agent
5 Orange spill or something down into those clays.

6 The Gunzner profiles and so on were
7 totally unlike any known source of dioxins in any
8 case. And so I went to some of these mine sites and
9 studied them firsthand. And they are overburdened by
10 one to two meters typically, maybe three meters, four
11 meters in some places of sandy soil, mostly sand and
12 similar beneath it. And then they have these clay
13 layers.

14 The water comes down. And you have a mine
15 face there where the clay layer is exposed. The water
16 comes down and straight out of the mine wall. It
17 doesn't seem to infiltrate the clay at all.

18 So in these situations, if the clay is
19 wet, I would think it would take a very long time for
20 it to dry completely. It wouldn't be a two-week thing
21 at all. But that is in Tennessee, where it is not a
22 desert.

23 I would be happy to send you some
24 references if you would like.

25 FACILITATOR CAMERON: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Bill?

2 MR. DORNSIFE: Two comments. First, the
3 radon pathway is very much dependent upon the period
4 of performance issue. And saying that, I mean if the
5 period of performance in terms of being able to
6 demonstrate something is 10,000 to 50,000 years, then
7 there probably needs to be some standard for radon
8 emanation because you do get significant build-up
9 similar to what you have in mill tailings during that
10 time frame.

11 I strongly recommend that you not use a
12 dose-based standard for radon emanation, that you use
13 the mill tailing standard.

14 The second issue is when the radon issue
15 becomes a problem, you know, at any given time, I
16 guess initially it's not a problem, but when it
17 becomes a problem, is there any concern about the
18 pathway for radon daughters, either -- well, first of
19 all, radon being dissolved in the water itself and the
20 radon daughters, then, getting in the water in the
21 cover or the radon decaying in the cover and then
22 being available for transport off the cover. For this
23 particular waste stream, does the staff think that
24 that is a potential significant pathway? Because once
25 you are in the cover, you are outside the so-called

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 isolation.

2 And I think that issue is potentially
3 unique to this waste stream because, you know, let's
4 face it. Radon is the issue here. I mean, if it
5 weren't for the radon component, this would be no
6 different than any other waste stream.

7 FACILITATOR CAMERON: Anybody want to talk
8 to either of Bill's points: use the mill tailing
9 standard or transport off the cover, including our
10 experts: Steve and Mike, Peter? Karen, do you have
11 anything, questions or anything on that, on either of
12 those two points?

13 MS. PINKSTON: Well, on the second point
14 with transport of the radon daughters, we would expect
15 in a performance assessment for a phenomenon like that
16 to be included, you know, if they can affect the
17 ultimate dose, I think for the daughters to in-grow to
18 the point where you would be having that happen, it
19 would be well into the future.

20 MR. DORNIFE: It would be what?

21 MS. PINKSTON: The time before that would
22 happen would be a very long time into the future. You
23 would have to have the radon in-grow first. But we
24 would include that type of thing in a performance
25 assessment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DORNSIFE: Well, again, depending upon
2 the period of performance, it may or may not be
3 important. You know, I mean, if your philosophy for
4 period of performance is a qualitative one, you know,
5 that you say, "Okay. If there is a society in the
6 future that this is what you need to do, then you may
7 want to consider that."

8 FACILITATOR CAMERON: Okay. Thanks, Bill.
9 Let's go to Felix and then Arjun. Felix?

10 MR. KILLAR: I just wanted to comment that
11 if the NRC is looking for data, EPA has just initiated
12 a study through the uranium miners. And what the
13 aspect of the study is is they are asking them to
14 moderate the evaporation rates around their mill
15 tailings piles and ponds to see as the pond evaporates
16 if there is radon carried off in that evaporation
17 factor.

18 So it is an ongoing work. It just got
19 started, but it may be something that the NRC may want
20 to look at to see what impact or potential impact.
21 That goes to one of the questions or points that Steve
22 brought up earlier.

23 FACILITATOR CAMERON: Arjun?

24 MR. MAKHIJANI: Yes. Just in regard to
25 the period of performance and a related question here,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we would be against changing subpart C in this
2 proceeding.

3 I understand there is a risk-informed
4 proceeding coming. That is the proper arena in which
5 subpart C should be considered because there you are
6 considering overall risk from low-level waste and the
7 classification as a whole, both in regard to period of
8 performance and dose standards in regard to organs and
9 whole-body exposure.

10 I recommended yesterday that you look at
11 the French rule. I actually forgot to bring it with
12 me. I think it might be at the desk upstairs. So I
13 will distribute copies of the French rule after lunch.

14 FACILITATOR CAMERON: Great. Thanks,
15 Arjun.

16 Michael?

17 MR. RYAN: Chip, you asked a question what
18 are our thoughts on using mill tailings guidance?

19 FACILITATOR CAMERON: Yes. I am going
20 back to Bill's first point about that the mill tailing
21 standard should be used, rather than -- I forget what
22 he --

23 MR. DORNSIFE: Well, just to talk a second
24 about what my rationale is, is that if we use the
25 25-millirem standard, Ma Nature can't meet that. How

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the hell do you have a 25-millirem standard for radon
2 emanation?

3 MR. RYAN: I'm lost here, Bill. I'm lost.
4 What is your point about the mill tailings standard?

5 MR. DORNSIFE: Use the same standard for
6 mill tailings, a 20-picocurie per square meter per
7 second.

8 MR. RYAN: So it's the radon emanation
9 rate is what you really want.

10 MR. DORNSIFE: Yes.

11 MR. RYAN: You don't really care where it
12 comes from.

13 MR. DORNSIFE: Yes, right. Right.

14 MR. RYAN: Okay. Just wanted to be sure.
15 I guess I am a little nervous about the idea that we
16 would mix and match and take something from the
17 uranium mill tailings and take something from
18 somewhere else where the staff is, to my way of
19 thinking, at a clean sheet of paper and try and
20 develop something that is consistent and internal for
21 the problem at hand.

22 So they may end up in that place, Bill,
23 but I guess I think you would shortchange the efforts
24 they have undertaken so far and are clearly here to
25 gather information to look at the uranium material

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question, whether it is uranium metal or uranium oxide
2 or some other chemical form, apart from the mill
3 tailings.

4 Mill tailings are relative homogeneous, so
5 some range of concentration in a different set of
6 substrates. I just don't know that the emanation
7 standard that derives from that analysis would
8 necessarily be appropriate or reachable or whatever
9 with regard to what the staff has undertaken now.

10 So they may end up in some place like
11 that, but I don't think just jumping right to the
12 conclusion "That's the right answer" is appropriate.

13 MR. ESH: But I think just, if I could add
14 to that, more generically the question is that if you
15 get from natural sources a significant quantity of
16 radon, should you limit it to a much lower value from
17 a manmade source than from the natural sources is the
18 basic question because that mill tailings flux rate
19 standard, you can convert it into a dose. It's higher
20 than 25 millirem generally.

21 So exactly what would you do? How does it
22 work out? Do you think it is appropriate to do
23 something different than lumping that in with the
24 whole 25? We have heard from Arjun not to do that in
25 this initial rulemaking now. That is a good comment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You know, what does everybody else think?

2 FACILITATOR CAMERON: Let's hear from --

3 MR. DORNSIFE: My recommendation is to do
4 it that way since it is an existing standard for the
5 same kind of risk and, let's face it, similar material
6 in terms of what risk it ultimately presents.

7 FACILITATOR CAMERON: Let's hear from
8 Diane.

9 MS. D'ARRIGO: Dave started to answer it.
10 I wanted to understand the comparison of that
11 20-picocurie per square meter generally means in terms
12 of dose versus like the low-level waste disposals, 10
13 CFR 61, 25-millirem, 25/75/25. Are those fairly
14 comparable or --

15 MR. DORNSIFE: I don't know. I don't know
16 what the --

17 FACILITATOR CAMERON: That's Dave --

18 MR. DORNSIFE: You know, it depends,
19 obviously, what assumptions you make and how --

20 MS. D'ARRIGO: Right, always.

21 MR. DORNSIFE: -- the radon concentrates
22 and, you know --

23 FACILITATOR CAMERON: Okay. Thank you.

24 MR. DORNSIFE: In air, it is probably not
25 a big deal, but if you build a house over it, it could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be.

2 MR. ESH: Yes.

3 FACILITATOR CAMERON: Dave?

4 MR. ESH: I would generally agree with
5 that. I don't think they are extremely dissimilar,
6 but I think that the one is higher than the other,
7 meaning that if you did take that flux standard into a
8 dose rate, like you do in part 61 analyses, that it
9 would give you a higher dose than what you would in
10 the other one.

11 MS. D'ARRIGO: So if we were going to
12 allow for depleted uranium to go into a 10 CFR 61
13 facility that has class A capability, wouldn't we be
14 requiring that it still meets the -- it couldn't add
15 significantly to what is already licensed.

16 MR. ESH: The answer is right now under
17 subpart C, if you included a radon in the dose
18 analysis, which we haven't included radon in other
19 low-level waste analyses or at least in the EIS that
20 was done because it wasn't a significant source. But
21 if you did include it in the analyses, right now it
22 would have to be part of that 25, which was Bill's
23 comment. But that is the discussion.

24 MS. D'ARRIGO: So that would mean that
25 there would have to be less of the other? I'm just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not sure what --

2 MR. ESH: It would mean --

3 MR. DORNSIFE: It is a total dose of 25.

4 MR. ESH: Yes.

5 MS. D'ARRIGO: So if you would put a whole
6 lot of depleted uranium in because there is a whole
7 lot of it, then would it maybe displace the other
8 stuff?

9 MR. DORNSIFE: It could exceed the 25.
10 That is the issue.

11 MS. D'ARRIGO: But if you had to meet the
12 25, then it could potentially prevent the other waste
13 from going in because --

14 MR. DORNSIFE: Or prevent this from going
15 in.

16 MR. ESH: Yes, one or the other. You
17 would have to meet the 25, regardless of what you were
18 putting in there. So if you had an inventory issue
19 that was getting you to 25, you would have to make a
20 decision about what inventory you wanted to put in
21 there that would allow you to achieve your regulatory
22 limits.

23 MR. RYAN: Again I am stuck with this
24 because it's a really big, huge apples, oranges, and
25 avocados mix here. We are talking about this radon

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 problem for most new materials as being something that
2 occurs well into the future, past any life of the
3 low-level waste that is disposed.

4 So the time frames are different. The
5 materials are different. You know, I really don't see
6 where you can just pull a standard down and say, "This
7 is the one that ought to apply, for these reasons"
8 without really thinking through all of these details.

9 MR. DORNIFE: Mike, I premised my comment
10 on recognizing this is highly dependent upon what you
11 do regarding period of performance. And if, indeed,
12 your period of performance is 10,000 to 50,000 years,
13 it could indeed be an issue. Okay?

14 MR. RYAN: At that point, it is the only
15 contributor to the total dose. This idea of adding to
16 low-level waste --

17 MR. DORNIFE: Why would you say that?

18 MR. RYAN: -- what part comes from what is
19 gone.

20 MR. DORNIFE: What? Why would you say
21 that?

22 MR. RYAN: What's left in 10,000 years at
23 a low-level waste site besides uranium?

24 MR. DORNIFE: Transuranics, you know?
25 Come on. There's a lot of --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RYAN: Dose consequences. The point
2 is the devil is in the details. Just saying, you
3 know, a priori that is the right number, I don't buy
4 it.

5 FACILITATOR CAMERON: Okay. More needs to
6 be done, looked at, context, according to Mike, before
7 you would just adopt the 25-millirem standard.

8 MR. DORNIFE: I have no problem with
9 that.

10 FACILITATOR CAMERON: Before we go to Tom
11 and to Steve, then to Tom, Diane, did you get the
12 answer to your question?

13 MS. D'ARRIGO: Well, I think maybe I am
14 starting to understand things a little better of what
15 Bill has been trying to say. I am just trying to --
16 it is my understanding that, even in class A, you've
17 got long-lasting radionuclides. Somebody may make a
18 determination that it is an insignificant dose, but
19 you still have long-lasting waste in there.

20 And class A is supposedly only hazardous
21 for 100 years. So that is why I have always been kind
22 of astounded that depleted uranium could now become
23 class A or that anything that isn't, you know, that
24 (a) (6) phrase, that anything that isn't listed in the
25 charts would become class A when class A is only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 really supposedly 100 years hazardous. So that has
2 always been one of the issues in 10 CFR 61 that has
3 been a problem.

4 FACILITATOR CAMERON: And that's the issue
5 now, isn't it, because of the significant quantity?

6 MR. ESH: That is why we are here having
7 this workshop because we acknowledge that that is an
8 issue and we hope to correct it. And there may be a
9 lot of different processes or methods you could go
10 about to correct it, but we are eventually going to
11 get there to correcting it.

12 MR. DORNSIFE: Just for closing, hopefully
13 a closing comment, I mean, the reason --

14 FACILITATOR CAMERON: We are all for
15 hoping.

16 (Laughter.)

17 MR. DORNSIFE: The reason for doing a
18 long-term peak dose analysis, as NRC requires in their
19 guidance, is to, in fact, whether it is A, B, or C,
20 look at mobile, long-lived radionuclides that are in
21 A, B, and C. And that long-term mobility analysis is
22 intended to show that, even under worst-case
23 conditions, you don't exceed the 25-millirem.

24 I mean, you know, the concept that
25 everything decays away in 100 years is not valid.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: Okay. Tom, let's go
2 to you. And then I am going to ask if Stephen has
3 something.

4 MR. MAGETTE: I would like to try to come
5 back to the agenda topic. I know it is a wild and
6 crazy thought, but stick with me here. Because all of
7 this is related in some way not only to this topic but
8 to some of the things that we talked about yesterday
9 and I tried to capture them in kind of one thought
10 yesterday and I would like to come back to that, the
11 notion that any scenario development is a guidance
12 topic, it should be site-specific, and that there are
13 important issues to be addressed in the rule, I
14 believe, to go beyond simply requiring a performance
15 assessment for depleted uranium or unique waste
16 streams, which is why I have come to subpart C, is the
17 appropriate place to capture those things.

18 We talked about a period of performance
19 yesterday, talked about dose standards. The reason I
20 bring those up is because I think they are
21 appropriately addressed in a rule. They are in
22 guidance today. The values that we talked about and
23 the ones I proposed yesterday are the ones from
24 guidance.

25 You can leave them in guidance and save

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 subpart C for another day, but I think what that does
2 is cloud the issue when you are talking about a
3 performance assessment that is focused on unique waste
4 streams; in particular, depleted uranium, because it
5 is different from what has been traditionally captured
6 under the regulations in part 61. That is why I think
7 it is important to pull that into the regulation.

8 Tying this together, Mike's comment
9 yesterday that if you want to ask me, if you are going
10 to pin me down on what I think the appropriate period
11 of performance is, I want to be simultaneously pinned
12 down on some other points. I can't pick that alone.

13 I think he is making the same point
14 without saying so today on the radon emanation
15 standard. And I agree with that point, although I
16 agree with where Bill is headed in terms of that being
17 an appropriate way to address radon in the long term.

18 So here again I think we have if we look
19 at this big picture and this notion of how does one
20 model these things in the environment, including, as
21 Karen has asked for input, how do we select these
22 scenarios and deal with these other issues, to me you
23 kind of have to capture them all together. I don't
24 think, as Mike said, you can pull any one of them out
25 of the air.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I don't necessarily object to the concept
2 that subpart C is a different matter. I just think
3 you have left a gap if you don't address that today.
4 And it will be a vacuum that some other force will
5 fill given the natural gas behavior of government
6 agencies.

7 So we either fill that vacuum today or we
8 allow for a wide spectrum of unintended consequences.
9 That is all.

10 FACILITATOR CAMERON: Thank you. Thank
11 you, Tom. Thanks for tieing Mike's concern into all of
12 this.

13 Steve?

14 MR. WEBB: Well, I want to make one
15 clarification. When I mentioned the evaporation rate,
16 I was not referring to the surface rate, rather,
17 underground rate, which is off the water table or
18 vadose zone. It's just a clarification there I want
19 to make.

20 MR. ESH: Yes. I think we understood your
21 comment.

22 FACILITATOR CAMERON: Thank you. Thank
23 you, Steve.

24 Anybody in the audience? You have heard
25 this discussion. And Tom sort of wrapped it up for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 us, brought it back to something he said yesterday.

2 Yes, Chen?

3 MR. CHEN: Yes. I want to talk about the
4 consistency issue that we cannot talk about because if
5 you cannot do the performance assessment, you have a
6 consistent unit you had to use.

7 For example, if you are going to talk
8 about peak dose, then you are measuring unit dose.
9 There is no escape from that. So you cannot mix dose
10 with flux or with some other things and try to find
11 out what your peak measure is going to be. So it had
12 to be dose at some point.

13 But coming back to what Bill says, I mean,
14 this whole notion about 10,000 years or whatever
15 beyond that, it is because of your decision of finding
16 where the peak dose is for protection purposes. So
17 you have got to have that decision to make to say what
18 will be the protection measure that you have and
19 consistently use throughout. So I just say there is
20 probably not much escape from using dose.

21 But come back to the issue about radon.
22 Radon is a very different animal. I mean, that
23 conversion factor there, you know, will probably
24 become too restrictive for you to be applying to
25 depleted uranium.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So I think that is a very difficult issue
2 that we had to wrestle to see what will be the common
3 measures that you have to define these whole
4 protection issues, at the same time not to be too
5 restrictive in constricting what you will be putting
6 in the waste disposal site there.

7 FACILITATOR CAMERON: Thank you.

8 I saw David Esh nodding his head in
9 affirmation on that. Dave, do you want to add
10 anything?

11 MR. ESH: No.

12 FACILITATOR CAMERON: All right. Anybody
13 else in the audience on the radon issue that we have
14 been discussing? Diane?

15 MS. D'ARRIGO: I have a beginner question.
16 Are people around the places where the DU is now
17 stored getting large radon doses right now?

18 FACILITATOR CAMERON: Dave, do you want to
19 tackle that one or Karen?

20 MS. PINKSTON: Right now the DU doesn't
21 contain very much radon just because it hasn't
22 in-grown yet. So if you look at the graph on I think
23 the second or third slide, it shows how much radon
24 would be there from DU over time. And so you don't
25 really start getting any significant amounts of radon

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 until I think after 100,000 years or so.

2 FACILITATOR CAMERON: So that the people
3 living around the site are not being exposed to radon
4 from the DU, at any rate?

5 MS. PINKSTON: Right.

6 FACILITATOR CAMERON: Okay.

7 MS. D'ARRIGO: So the tension, then, is
8 between -- I am just reiterating from earlier as I
9 realize what is going on. So the tension is that we
10 don't really have to worry that much about radon now
11 in our 10 CFR 61 time frame. We have to worry more
12 about groundwater. Is that right?

13 And then down the pike, long after the
14 license has expired, if the 10 CFR 61 criteria stay in
15 place, then there is a potential radon problem or
16 wherever it is in storage.

17 MR. ESH: Yes. I think that is a pretty
18 good summary of the issue. Of course, the groundwater
19 can be a shorter-term issue or it can be a much
20 longer-term issue also, just like the radon, depending
21 on the site characteristics, properties, geochemistry,
22 et cetera. But you gave a pretty good summary of it.

23 FACILITATOR CAMERON: Great. Thank you.
24 Thank you, Diane. Thanks.

25 Let's go to unique waste streams, see if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we can get that done. And then we will see where we
2 are, and we will take lunch. Dave is going to tee
3 this one up for us.

4 ISSUE 2: UNIQUE WASTE STREAMS

5 INTRODUCTION

6 MR. ESH: Okay. So definition of unique
7 waste streams. I imagine this one is going to be a
8 little bit tricky. I know we have spent a lot of time
9 talking about depleted uranium and the technical
10 issues associated with depleted uranium. But in my
11 view based on what I am looking at going forward, this
12 definition of unique waste streams and how you develop
13 regulatory requirements for it is going to be as
14 time-consuming as the other part for me personally
15 because we have to try to decide, are we going to try
16 to anticipate what these waste streams may be? And if
17 not, what generic process or requirements are we going
18 to put in place to capture future ones so that we are
19 not back at this point 20 years from now?

20 So in the 10 CFR, just a little bit of
21 background, 10 CFR 61 developmental analysis in the
22 1980s, as I said in my introductory talk, they
23 considered a variety of waste streams. They separated
24 them into groups and then different types within those
25 groups and made isotopic distributions within those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 groups and basically did a giant summation of our
2 groups and isotopic distributions and arrived at some
3 inventory estimates.

4 It was a pretty detailed analysis and a
5 pretty decent job, I would say, if I had to do that
6 work back in the day when they did it, the 1980s, I
7 don't know what differently they could have done.

8 I am asking you to put on your thinking
9 caps and try to look forward or even look current and
10 look forward and say, what is out there? What is
11 potentially out there, number one, that could fall
12 into this same sort of category we are now with
13 depleted uranium?

14 Number two, if I am not that smart and I
15 can't say what is coming down the road, what do I need
16 to put in place to handle it when it does come down
17 the road in the future? Those are the two things that
18 I am going to have to try to do. And so whatever
19 input I can get from you to help me with that task, I
20 would appreciate it. I think that is it.

21 Oh, just a little bit. We have already
22 been through this, the decay characteristics, a little
23 bit different or a lot different. Quantities disposed
24 of were much different than anticipated in the 1980s.

25 So those are a couple of ways you could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 identify uniqueness. If it behaves differently than
2 the other things than you thought, if the quantities
3 or concentrations are significantly different than
4 what you thought, there might be some other
5 considerations to define uniqueness. And I don't
6 necessarily know what they may be, but we have a lot
7 of smart people here to help me do that.

8 So that's it.

9 FACILITATOR CAMERON: Okay. Thanks, Dave.

10 And I take it from that you said that there could be
11 a number of different components to this discussion or
12 to how the NRC deals with this in the rulemaking.

13 One would be to identify a specific waste
14 stream now, say this is like DU. The other way to do
15 it would be to say let's establish some
16 characteristics, generic characteristics, that would
17 help us to do this.

18 And I guess the other aspect is some sort
19 of a process mechanism in the rule that would alert
20 the NRC to do something. Is that basically it?

21 MR. ESH: Yes. And, you know, I think we
22 need to strive for simple and crispness, if possible,
23 in this area. If we would go in like a
24 definition-based approach, my experience has been we
25 run into a lot of difficulties when regulators aren't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specific enough in certain areas.

2 And then everybody runs off and tries to
3 interpret. And they all interpret definitely, and
4 they all argue with each other when it could have all
5 have been solved if you were more crisp up front with
6 what you intended. So I would ask to consider that.

7 One of the things that I have struggled
8 with or talked with some people about and debated is
9 right now you have an estimate of what was assumed for
10 an inventory in the EIS that was developed in the
11 1980s.

12 So it is unique defined by anything that
13 is not in that inventory. I mean, we kind of got
14 there with depleted uranium by that. I am saying it
15 wasn't in that inventory. Therefore, we need to
16 consider it.

17 But is that a practical approach to do
18 going forward? I don't know whether that is practical
19 or not. It seems problematic if we have to try to
20 compare things to an inventory. If you give a
21 snapshot of what you think inventory is and then you
22 say anything that is not in it, you have to go into
23 some process.

24 I don't know how workable that is. It is
25 certainly an option, and we are open to all options.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And maybe that is the option we would select, but this
2 seems this is probably an unappreciated, challenging
3 area in this process for us.

4 FACILITATOR CAMERON: Okay. Thank you.

5 Let's go to Tom.

6 MR. MAGETTE: Thanks, Chip.

7 Actually, this is a fully appreciated,
8 challenging area. I am not quite sure how you do it.

9 I don't think not defined in the original rulemaking
10 means unique. It may have not been defined. That
11 doesn't make it unique. So I don't think that is the
12 right definition.

13 Arjun has suggested that some of the
14 things that I have proposed are better left for this
15 next rulemaking, the reevaluating part 61 rulemaking.

16 I disagree for a couple of specific reasons in terms
17 of what I think is best done today, but I accept that
18 that is a very rational position.

19 I understand why he says that. I can
20 certainly appreciate that that would be a way to go.
21 And I see this as also something that fits better in
22 the next rulemaking.

23 I can't find a way to get comfortable with
24 the concept of other. I don't see how you can put
25 into a regulation "other." I just don't see how you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are going to get a definition that will ever be
2 anything but the basis for numerous long-winded
3 arguments. I just don't think you are going to get
4 there from here.

5 So if you suggest that this is something
6 that fits better in the next rulemaking, then what
7 that does is it puts it, along with everything else
8 that you may dispose of, in the context of having to
9 be assessed via a site-specific performance assessment
10 for compliance with subpart C or what it may become.

11 So you would look at what is there on a
12 site-specific basis. And that is how you assess what
13 is suitable. The notion of risk-informing part 61
14 would capture this.

15 Other ways to capture this I am afraid, I
16 haven't heard a definition that works yet. So I don't
17 have one for you. My suggestion is that you put this
18 notion off into the risk-informing question.

19 FACILITATOR CAMERON: Okay. Thank you for
20 that recommendation.

21 Let's do this side. Then we will go over
22 to Bill and Christine. Felix?

23 MR. KILLAR: Yes. I endorse Tom's
24 comments for somewhat of a different reason. When you
25 go out and start trying to determine what is unique,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there is no clear-cut definition of what unique is.
2 And so by creating a definition of what is unique, you
3 have just created another term and another group. But
4 then you are going to have somebody come back and say,
5 "Well, gee, I think that's over here." And you say,
6 "No. It should be over there. It should be in this
7 unique definition."

8 I think that you end up with more problems
9 by creating a unique category, unique definition than
10 you are going to solve by doing a unique definition.
11 So I think that I am sort of in Tom's camp here to the
12 extent that the -- you know, I don't think that we
13 need to get into this issue right now because I don't
14 know that we have identified anything other than
15 depleted uranium.

16 One of the areas I work in is in
17 recycling, what have you. And one of the things we
18 are concerned about is waste streams that come out of
19 recycling facilities.

20 For the most part, we have been able to
21 classify those fairly well into the existing
22 classification range. We haven't identified any that
23 are unique, so to speak.

24 So, once again, I am concerned -- and that
25 actually was my discussion yesterday -- that when you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 start getting unique, you make sure you are talking
2 about uniqueness of the isotopes, uniqueness of the
3 material, not of the stream it came from, not from the
4 facility it came from, not whether it came from a
5 recycling plant or a fuel fabrication plant or
6 enrichment plant. You are looking at the particular
7 material and the characteristics of that material.

8 So stay away from uniqueness. As a result
9 of the source of material, you are looking at the
10 characteristics and the environmental characteristics
11 of that material goes forward.

12 So yes, I think uniqueness is a very
13 difficult topic to try and address. I think that it
14 really needs to be postponed until we have some of
15 these other things behind us.

16 FACILITATOR CAMERON: Thanks. Thanks,
17 Felix.

18 Diane?

19 MS. D'ARRIGO: As I understand the way
20 that 10 CFR 61.55 was developed, it was by
21 characterizing nuclear reactor waste and then fitting
22 everything else that was radioactive waste into this
23 categories. And so we are continuing to do that, it
24 seems.

25 The Sierra Club policy that was adopted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 back in -- I don't know if it was the '80s or the '90s
2 -- was to limit the longevity of the waste that goes
3 into a site, into the institutional control period of
4 the site.

5 So that if the radioactive waste facility
6 were going to have 100 years of institutional control
7 that nothing should go in that was going to remain
8 hazardous longer than 100 years, then we get into the
9 debate about what is hazardous and all of that. And
10 then we get into that when we talk about doing
11 risk-based categorization of waste.

12 And that has so many uncertainties and
13 dependencies on it that it makes it very difficult for
14 the public to know what anything is. It is a shifting
15 ground.

16 And also there is a difference in what the
17 risk is. The waste generators and the waste
18 receptors, as we are called, have a different
19 perception of the risks. And so that is not
20 necessarily the answer.

21 So I wanted to just put that out.

22 FACILITATOR CAMERON: Okay. And anybody
23 who wants to comment on that as we go along, please
24 feel free to do that.

25 Michael? And then we will go to Bill and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Christine.

2 MR. RYAN: Thank you, Chip. I have been
3 struggling a little bit with, how do I get to what
4 unique is? A couple of thoughts as you gave your
5 presentation that hit me, I will offer the list of
6 waste that you kind of showed the picture from the
7 draft and final EIS. Be careful because I wonder how
8 those inventories were created. Were they created off
9 manifests or by other kinds of data?

10 So there is a little uncertainty in those
11 data likely. And I am going to bet they are on the
12 conservative side. They are probably overestimated.

13 So we don't want to pile conservatism on
14 conservatism to try and come up with some radiological
15 definition or curie definition of unique waste. To
16 me, the uniqueness of the circumstance we are talking
17 about this week is large, bulk quantities of uranium
18 that is relatively pure and then over millions of
19 years becomes more like natural uranium. Sure, that
20 is unique, but I struggle with, how do you get to
21 generalizing that definition?

22 I would say things that fall out of a
23 first pass at a performance assessment kind of
24 approach would be the only way to try and get at it.
25 And there are many examples where unique circumstances

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have been evaluated and approved at disposal sites all
2 over the country with that approach in mind.

3 So, rather than try to come up with a
4 definition, if you came up with as licensees evaluate
5 waste stream as appropriate or regulators evaluate
6 waste streams as an appropriate waste and determine
7 they are not, then they ought to go to this unique
8 waste process perhaps. I mean, I am just trying to
9 give a little structure to the idea of unique and what
10 it would mean to me.

11 Steam generators, reactor vessel, other
12 things have been disposed at the disposal sites based
13 on a kind of a 61 analysis but specific for those
14 issues and the special features under which those
15 materials are disposed.

16 So I would tend to get away from trying to
17 define unique and stick with the fact we have got a
18 process that evaluates slightly different cases of the
19 relatively same material, fission products activation
20 products and source material and all of that.

21 And if you want to mine what's been done
22 and how that has been done, that may give you some
23 insights as to what a good way to make that process
24 more regular might be.

25 MR. ESH: So if I just sort of can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 summarize, you think there are existing processes that
2 handle many of these unique situations appropriately?

3 Do you think that they are robust enough or clear
4 enough for both the licensees and/or the state
5 regulators -- maybe we will have the state regulators
6 speak to it -- to know when they might be in that
7 situation?

8 MR. RYAN: You know, from my own personal
9 experience, I would say this is the first one, you
10 know, the long-term large quantities of uranium where
11 we are outside of the box that good decisions have
12 been made in my experience. So this is in 30 years
13 fairly unique for me or different. I shouldn't use
14 the magic word "unique."

15 So I would say there are many, many cases
16 where things that are by concentration greater than
17 class C waste, like strontium-90 eye applicators can
18 be put in the stainless steel capsule and grouted shut
19 and averaged over that inner steel capsule. And it's
20 class A, as it should be, because it is a teeny, tiny
21 quantity of strontium.

22 And waste streams have evolved from large
23 blocks of very dilute water being solidified in
24 concrete to now very concentrated solid materials.
25 And all of those things have evolved over this 30-year

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 period. And they have all been handled okay because
2 ultimately it is the inventory that drives the
3 disposal risk.

4 So I would say this is really something to
5 put on the table until later on and rethink it a
6 little bit more and maybe even do some specific
7 information gathering on the history of special waste
8 analysis to better inform what questions you could
9 ask.

10 FACILITATOR CAMERON: Okay.

11 MR. RYAN: Thank you.

12 FACILITATOR CAMERON: Bill?

13 MR. DORNIFE: If your criteria for
14 determining what a unique waste stream is, in fact,
15 whether it was adequately analyzed in the original
16 documentation for part 61, if that is the criteria,
17 then I think there are three, at least three, waste
18 streams that need to be looked at to make sure that
19 was, in fact, done that are very similar to this
20 depleted uranium waste stream.

21 The first one is -- well, two of them are
22 actually source material. There is regular old source
23 material that is not depleted. Were the assumptions
24 in the original part 61 adequate to assess that issue?

25 The second waste stream that is very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 similar -- and it becomes a problem even sooner -- is
2 the thorium-232 waste stream.

3 The third one is the enriched uranium
4 waste stream.

5 And then at the very least, you need to
6 assure yourself that these are not unique in the same
7 way that depleted uranium is unique. Okay? And for
8 future purposes, I think there is another waste stream
9 or waste streams, that you need to make the same
10 assurance that they were adequately assessed in the
11 original documentation. And that is those transuranic
12 waste streams that decay through neptunium and the
13 fact that neptunium typically is a lot more soluble
14 than the parents.

15 FACILITATOR CAMERON: Okay. Thanks, Bill.

16 Before we go to Christine, let me just ask
17 Tom a clarifying question. You started off when you
18 were giving suggestions on this saying that the
19 analysis that was done for original part 61 should not
20 be the driver on this. Is that in conflict with what
21 Bill is saying or not really on point?

22 MR. MAGETTE: I don't think it is
23 necessarily in conflict with what Bill is saying. I
24 don't mean to -- I am just saying that as a starting
25 point for many of the same reasons that Mike listed,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but that is not necessarily a really good starting
2 point.

3 Are there other things that might ought to
4 be looked at, as Bill suggested?

5 FACILITATOR CAMERON: Okay.

6 MR. MAGETTE: Those are two completely
7 different questions in my mind.

8 FACILITATOR CAMERON: All right. Okay. I
9 just wanted to make sure of that. Christine?

10 MR. ESH: I'm sorry. Let me jump in here
11 real quick. I didn't want to say that those
12 approaches that I mentioned weren't the only
13 approaches. They were just a couple of ideas, right.

14 So there are lots of other ideas. Ultimately you
15 want to ensure safety of what you are disposing of.

16 So there might be an approach like a
17 screening method or something that you could put a
18 waste stream in to say, "Does it bump me into this
19 process?" Right? You do some sort of safety
20 screening process, say, "Am I kicked in there? If I
21 am kicked in there, now follow this process to ensure
22 that it is safe."

23 MR. DORNSIFE: And that is exactly my
24 point. I mean, based on the methodology you all have
25 come up with, the depleted uranium, you at the very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 least need to go use the same methodology to look at
2 these other waste streams that have in-growth and
3 could create potential problems and assure yourselves
4 it was adequately covered. And the uniqueness about
5 DU is that it was not.

6 MR. MAGETTE: I think what I was
7 suggesting actually takes what David and Bill were
8 just saying even a step further, which is, instead of
9 looking for something to kick you into that, so to
10 speak, or trying to create a definition of things that
11 if we discover them a decade from now, yes, that is
12 one of them. And it kicks me in, that we, I believe,
13 are on the threshold of a rulemaking that will clarify
14 and specify that everybody is already there.

15 I mean, there is an interpretation of
16 subpart C that says everybody should be doing that
17 today. And what I think we are suggesting is that
18 clarify and codify that that is the case.

19 That then captures everything. You can
20 call it unique. You can call it rare. You can call
21 it common. It doesn't matter.

22 FACILITATOR CAMERON: Mike?

23 MR. RYAN: You know, one way to think
24 about this to me, David, is that there are wastes that
25 are well-understood, well-analyzed, and well within

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the wheelhouse of 61. And there are some wastes,
2 uranium, depleted uranium being one, that are not.

3 So it is not unique. It just hasn't been,
4 you know, either fit into the system or taken out of
5 the system. So I am a little nervous about trying to
6 come up with a definition of unique when we are really
7 asking the question, have you done a performance
8 assessment for this quantity of these materials at
9 this site or not?

10 So, again, I am kind of back to the if the
11 process of doing that performance assessment takes the
12 next step from what was done in the '70s and '80s and
13 gets to this more modern way to calculate stuff and
14 can analyze a whole lot more parameters a whole lot
15 faster and a whole lot more transparently, that is
16 where to put the energy, rather than try to come up
17 with a definition.

18 FACILITATOR CAMERON: Okay. Let's hear
19 from Christine. Christine?

20 MS. GELLES: And, again, as I guess a
21 preface, I don't think I have any new ideas here, but
22 what I would like to just spend a few moments doing is
23 offer DOE's experience as a validation of all of the
24 points that I heard here.

25 We do rely on site-specific performance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 assessments. And by virtue of that, we establish our
2 waste acceptance criteria. But DOE doesn't enjoy
3 homogeneity in its waste streams.

4 We have a lot of different waste streams.

5 And the difference in the waste streams has to do
6 with the concentrations and the characteristics, not
7 necessarily the origin, what process originated or
8 created the waste, the waste stream or its specific
9 form.

10 So we have decades of practice of
11 considering whether or not "unique waste streams," new
12 waste streams, new concentrations of old waste streams
13 can be accepted at our existing facilities, even
14 though they might exceed the waste acceptance criteria
15 that were established. And what we do is we run
16 special analyses. We rerun our performance assessment
17 to determine if they can be an acceptable.

18 So, first off, I agree with what Mike
19 said, that trying to define what a unique waste stream
20 is is as problematic as trying to define what a
21 significant quantity is. I think it misses the mark.

22 Instead, let's continue on the path of establishing a
23 process where today we work towards creating a
24 framework where site-specific analyses are relied
25 upon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And then in the future, as Tom suggested,
2 perhaps for the longer-range rulemaking, you consider
3 establishing the process for running special analyses
4 when new or "unique" waste streams require some sort
5 of analysis. I think it really boils down to a graded
6 approach.

7 In terms of the experience across the
8 nation, I think many of those experiences probably
9 exist at DOE facilities. The strontium-90 example you
10 gave is perfect. That is a real-life example. And we
11 have lots of case studies of how we have done this
12 that we would be happy to share with the NRC as they
13 try and move forward on this.

14 FACILITATOR CAMERON: Thanks, Christine.
15 I think we are seeing commonality of views coming out
16 of the recommendations to the NRC here.

17 Let's hear from Diane. Then we will go to
18 Mark and Arjun and Bill. Diane?

19 MS. D'ARRIGO: I wanted to ask Felix, when
20 you mentioned recycling, did you mean the reprocessing
21 definition or the processing that is going on for
22 low-level waste, that there are new forms? I want to
23 understand what you meant.

24 MR. KILLAR: What I was referring to, when
25 I say, "recycling," I'm talking about closing the fuel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cycle. So we are taking spent fuel, partitioning the
2 various products into recoverable materials that are
3 reused and recycled back into power plants.

4 And then you end up with some waste
5 products. We will end up going to both low-level
6 waste disposal facilities as well as high-level waste
7 disposal facilities.

8 MS. D'ARRIGO: Because you were talking
9 about reprocessing and not the new waste forms that
10 are coming out of the processors of low-level waste
11 and that other level of waste. Yes. Okay.

12 MR. KILLAR: Okay.

13 MS. D'ARRIGO: I'm wondering. Actually,
14 it made me wonder if the processors' waste, you know,
15 how does that -- I guess they analyzed that for waste
16 acceptance at the existing sites. And they are trying
17 to process it so that it meets existing waste
18 criteria.

19 MR. KILLAR: Well, the answer is similar
20 to what the gentleman from the NRC said earlier. We
21 will look at the characteristics that the waste has to
22 have in order to go into existing disposal facilities.

23 We will do the processing on those materials, those
24 waste streams to make sure that they are consistent
25 with those characteristics that are acceptable at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 disposal facilities.

2 FACILITATOR CAMERON: Thank you.

3 Mark and then Arjun? And then we will
4 come back over here and get to the audience. Larry
5 has an answer to a question before we break.

6 MR. CAMPER: I have a question for the
7 group, too, when you are ready.

8 FACILITATOR CAMERON: Okay. Well, let's
9 get these cards. And then the question to the group
10 concerns this subject?

11 MR. CAMPER: Yes.

12 FACILITATOR CAMERON: Okay. Go ahead,
13 Mark.

14 MR. YEAGER: I wanted to kind of add o to
15 what Mike had mentioned earlier. When Richard tasked
16 me with the questions that NRC proposed in preparation
17 for this meeting to define unique waste streams, that
18 is kind of the same conclusion Mike came to. It is
19 really not much you can do to redefine the issue based
20 on isotopes but mostly waste form.

21 One of the things that agreement states
22 are all having to deal with now because of -- I am
23 going to use this as an example, a unique waste
24 stream. And luckily it is something that is currently
25 very manageable so far is the need for drinking water.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 There are a lot of wells that used to not be used for
2 drinking water because of the limitations of EPA on
3 concentrations of natural uranium and radium.

4 So we have had to do a lot of
5 site-specific analysis for disposal of residuals,
6 filter media. And Dan Schultheisz and EPA have worked
7 a lot on that effort as well.

8 And through our own regulations, for
9 example, small quantities of source material, we
10 basically have issued a general license, which is, in
11 essence, a copy of our regulations for a generator of
12 filter media in the upstate part of our state that is
13 going to accrue uranium over time in filter media,
14 very small concentrations but very unique for us
15 because we never had to address that before.

16 Again, general license, it's perfectly
17 fine for them to proceed. But with the water
18 filtration, again, a site-specific model, RESRAD model
19 is issued because when that material has to be
20 disposed of, it usually goes to a subtitle D landfill.

21 And that justification is used.

22 One of the other things that I will bring
23 up -- I know this is really off the wall, but it needs
24 to be addressed -- availability through the
25 restrictions of the compact system, Low-Level

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Radioactive Waste Policy Amendments A.

2 There is a potential for waste streams
3 that we can anticipate being generated by
4 jurisdictions that don't have access to compact waste
5 sites. And that is just the reality of the situation.

6 That affects not only states, but it
7 affects federal agencies with sites that aren't in
8 compacts. So what is the alternative? The
9 alternative is disposal at DOE facilities, whether it
10 is interim or permanent storage.

11 Now, where are most of these federal
12 facilities located? They're located in states that
13 currently or formerly hosted low-level waste sites.
14 That doesn't go over well with the public in terms of
15 here we are. We did our duty. We took it for the
16 team. And now more stuff is coming in.

17 So we are talking regulation, and I
18 understand that, but I just wanted to make the comment
19 that there are policy issues involved as well.

20 Another thing that Richard and I have been
21 kind of pulled into over the past few years has been
22 homeland security. And this is where I am kind of
23 stretching it, but it is a reality, although extremely
24 remote, that if there was a deployment of an RDD, for
25 example, you could very well have a lot of very low

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 concentrations of debris and soil that need to be
2 managed and can't be put in an interim storage-type
3 situation.

4 And so, again, I backtracked to what if
5 this jurisdiction where this event happened doesn't
6 have availability to dispose? That is an example of a
7 unique waste stream. It has nothing to do with the
8 constituents, but it should be something that is
9 factored in as a contingency by NRC because if, God
10 forbid an event like that should happen.

11 You guys are going to be the ones to ask,
12 hey, what are we going to do with this? And you
13 aren't going to have the option to delay that
14 decision. It is going to have to be you're going to
15 have to gin up the numbers quickly. I think it's
16 manageable, but I just wanted to point out policy
17 versus regulation and the --

18 FACILITATOR CAMERON: Yes.

19 MR. YEAGER: -- and the complications that
20 could arise.

21 FACILITATOR CAMERON: You are giving us a
22 different ways, different lens to look at this idea of
23 uniqueness besides concentration, so very good
24 comment.

25 Arjun?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: Yes. I think there seems
2 to be a lot of agreement that the NRC not try to make
3 a list of unique waste streams as part of this
4 process. I mean, that was suggested as one possible
5 option, but that doesn't seem to be a good course to
6 follow.

7 Obviously a lot of unique situations,
8 specific ad hoc situations, are being managed as they
9 come up, as Mark just said. And you do have to deal
10 with that.

11 The bottom line in all of those
12 situations, I presume, is that you are confident that
13 the requirements of subpart C are being fulfilled
14 because if they are not being fulfilled, you are not
15 disposing of the stuff legally. And usually you are
16 disposing of small amounts of stuff, whether they are
17 dispersed in large volumes or whether it is a small
18 amount of radioactivity that you are packaging, like
19 the strontium-90 waste source that Mike talked about.

20 So I would simply say that at this point,
21 that if you simply reaffirm subpart C, at the risk of
22 sounding like a broken record, this other problem
23 would simply go away. The licensees and the agreement
24 states and so on all have the burden of considering
25 these ad hoc situations but with the caution that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 certain kinds of waste streams that may be coming down
2 the pike, you can't throw it into the existing mix.

3 The recovered uranium from reprocessing
4 would be an example. You have got a significant
5 quantity of uranium that is now contaminated with
6 technetium and plutonium and neptunium. And if you
7 throw that into the mix as waste, then you're again
8 beyond what was considered in the original regulation.

9 The kinds of things that are being done
10 today generally without being familiar with all of the
11 details, what I presume pass through the subpart C
12 screen and will generally be within the spirit of what
13 was done in the EIS back then. So tables 1 and 2 are
14 pretty limited, but there is a spirit of how the waste
15 was classified that I think subpart C talks to.

16 So, with Diane's caution that if you
17 generally kind of stay within the idea of it, you are
18 not pushing the institutional control limit with new
19 waste streams, I would be happy with not going there
20 in this, bumping it to the next process, as Bill
21 suggested, I think.

22 FACILITATOR CAMERON: Yes. And many
23 others have suggested.

24 MR. MAKHIJANI: And Felix.

25 FACILITATOR CAMERON: Thank you, Arjun.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Larry, do you want to? Bill, why don't
2 you just say what you have to say? And then I want to
3 hear from Larry, who can react to all of this and give
4 us his ideas. Bill?

5 MR. DORNSIFE: If NRC does do this what I
6 would call a screening process to take a look at these
7 other waste streams that are similar to DU and make
8 sure that there are no hidden issues, which I do think
9 you need to do to assure yourself there are no other
10 unique waste streams, you probably ought to also look
11 at the exempt waste streams that have the same
12 characteristics, just to be sure that that exemption
13 does not create a problem for you. You know, for
14 example, there are some pretty high concentration
15 thorium exempt waste streams that could find their way
16 into disposal.

17 Based on Christine's comment, since they
18 are not encumbered by NRC, I would be curious of
19 whether any of their site-specific analyses have
20 determined that pure DU is an acceptable waste stream
21 for disposal in shallow land burial and if so, how hey
22 dealt with the issues we have been struggling with.

23 FACILITATOR CAMERON: Do you want to
24 answer that right now or do you want to confer before
25 you answer it and let Larry go?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. GELLES: I am going to simply say that
2 while we have disposed of some pure DU, we would have
3 to go back and look at what the results of the
4 performance assessment runs were.

5 MR. DORNSIFE: I think your experience
6 there I think would be very helpful in terms of what
7 we are discussing. You know, how did you deal with
8 the long-term issues of in-growth and --

9 MS. GELLES: We look forward to working
10 with Larry and his staff. And if you want to craft
11 some very specific questions, we will be happy to
12 provide some of our modeling history for you.

13 FACILITATOR CAMERON: Great. Thank you.

14 Larry?

15 MR. CAMPER: Thank you, Chip. Thanks,
16 everyone. I want to thank aloud with you from a
17 process standpoint. I have found the comments on this
18 particular issue of a unique waste stream and trying
19 to define a unique waste stream to be intriguing and
20 interesting, indeed.

21 When we were wrestling with this concept
22 of a unique waste stream when we were preparing the
23 SECY and talking about large quantities of depleted
24 uranium, I think it's fair to say that the staff was
25 perhaps being clever and proactive in looking back at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what occurred when part 61 was put in place years ago
2 and this issue of large quantities of depleted
3 uranium. And depleted uranium ended up by default in
4 class A.

5 So we are trying to be proactive at this
6 stage of the game since we are engaged in a
7 rulemaking. Can we prevent that from happening again,
8 at least within the realm of knowledge that we can get
9 our hands around?

10 I think what I am hearing is that this
11 notion of trying to define a unique waste stream,
12 whatever that is, is indeed problematic.

13 Now, having said that, when we go back and
14 communicate with the Commission in the future as we
15 proceed with this rulemaking, we are going to need to
16 say something about this concept called unique waste
17 stream.

18 I was listening to your comments. I was
19 struck by something that the Commission said again
20 during the LES proceedings. Here is what the
21 Commission said in order CLI-05-05, blah blah blah.
22 The Commission stated, "Indeed, when part 61 was
23 issued, its environmental impact statement explicitly
24 acknowledged that the NRC might receive license
25 applications involving disposal of low-level

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 radioactive waste requiring either an enhanced
2 near-surface disposal method or intermediate land
3 disposal methods. It was and remains the NRC's intent
4 to retain flexibility to be able to address these
5 license applications in the existing framework of part
6 61 rule. And in the end, the bottom line for disposal
7 of low-level radioactive waste is the performance
8 objectives of 10 CFR subpart C." I think we all know
9 what they are.

10 "Thus, while there may not yet be detailed
11 technical criteria established for all of the kinds of
12 land disposal that might be proposed under Part 61,
13 criteria can be developed on a case-by-case basis as
14 needed.

15 "Specific disposal requirements for more
16 stringent land disposal methods, therefore, were left
17 to be addressed in action on a specific application,
18 subsequent guidance, and rulemaking effort if
19 rulemaking is warranted."

20 Does that sound like a reasonable thing to
21 go back and say to the Commission, given what I have
22 heard here today about how difficult it is to define a
23 unique waste stream, I mean, Commission, on this
24 issue, you have previously stated that this really
25 does need to be developed on a case-by-case basis up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to and including rulemaking if so indicated. Is that
2 a reasonable response?

3 FACILITATOR CAMERON: Let's start with
4 Mike. I think that we need to ask whether some of the
5 suggestions we have heard around the table are the
6 same thing as what you read. Mike had a comment that
7 he was going to make before. Mike, if you could try
8 to answer Larry's.

9 MR. RYAN: As I said, Larry, I think this
10 is from my recollection, the first one where we have
11 kind of been in this unique category. So I would say
12 it is not broken, you don't need to fix it. It is
13 that simple to me.

14 The other part of this that is a dimension
15 that we haven't talked about, I'm going to take you
16 from depleted uranium all the way to the other side of
17 the spectrum, which is stellite balls for nuclear
18 power plants, which are very radioactive with
19 cobalt-60. And they are much greater than class C.

20 Now, if you do a performance assessment on
21 all of the stellite balls in the country, in just
22 about any disposal setting, there is no risk. So I
23 would dial out to the unique waste form that had
24 dropped off the truck in years ago by.

25 There is no reason by stellite balls are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not low-level waste except operationally, in handling
2 them, transporting them, getting them to the disposal
3 site, offloading them and disposing them and covering
4 them up. There are some additional issues to address
5 because of the high external radiation dose rates dose
6 rates.

7 From a performance assessment point of
8 view, they are of no consequence, mainly it's a
9 five-year half-life and the cobalt form they are in is
10 insoluble in water.

11 So if we are going to talk about gathering
12 in all of these odds and ends that are important to
13 address with a methodology, let's don't forget that
14 side of the spectrum.

15 The other dimension is that these sources
16 are important, there is a lot more interest in sealed
17 sources because of security issues these days. So
18 maybe that's a thing we should dial out and look at
19 because I know states -- Mark's comments are
20 well-taken and others, they collect them up. And then
21 there is a national program to collect them, but it is
22 a big deal. Many of them, in fact, could probably
23 qualify as low-level waste.

24 Again, I emphasize the disposal risk is
25 not the concentration in the source. It is the total

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 amount disposed and the results of the performance
2 assessment of that inventory.

3 FACILITATOR CAMERON: Okay.

4 MR. RYAN: I just wanted to get that in
5 David's list of things to consider to dial it out the
6 other way.

7 FACILITATOR CAMERON: Just for the record,
8 you used the phrase "dropping off the truck" in a --

9 MR. RYAN: Yes, in a symbolic kind of way.

10 FACILITATOR CAMERON: -- not in a real --

11 MR. RYAN: Not a real drop off a real
12 truck.

13 FACILITATOR CAMERON: Those things didn't
14 drop off the truck somewhere?

15 MR. RYAN: Yes.

16 FACILITATOR CAMERON: Okay.

17 MR. RYAN: Thanks for that clarification,
18 Chip.

19 FACILITATOR CAMERON: Yes. Tom?

20 MR. MAGETTE: I think the answer to your
21 question, Larry, is yes, that would be a very good way
22 to go back to the Commission. I think it was a really
23 good idea to put it on the table to say, maybe this
24 isn't the only one. Let's define how we might capture
25 future cases we haven't thought of so we don't have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 come back to a rulemaking.

2 And upon further reflection, it's maybe
3 not something that is feasible. That is my view. I
4 really don't think it is, but I think you have a good
5 answer for the Commission, notwithstanding.

6 FACILITATOR CAMERON: Okay. Thanks, Tom,
7 very direct.

8 Mark and then Arjun and Bill.

9 MR. YEAGER: I just wanted to follow up on
10 Mike's comment about the stellite balls, for example.

11 And we have seen this as the life of the site ended.

12 And a lot of people were trying to get -- as long as
13 we had access to Barnwell, let's go ahead and get
14 these sources out of here. So we had a tremendous
15 amount of sealed sources with tremendous amounts of
16 concentrated radioactivity in them.

17 And, just like Mike said, as far as a
18 performance standpoint, it is moot because they are
19 going to be decayed within an institutional control
20 period.

21 The issue that I have as a regulator,
22 getting it from point A to point B has been such a --
23 I look at it from the regulator standpoint and trying
24 to make sure that it is transported safely within
25 those limits that DOT specifies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You can't imagine how much elemental lead
2 and depleted uranium are used to try to get it from
3 point A to point B. And then ultimately it goes in
4 the ground just for that one little trip for that
5 compliance. And it adds to a different component
6 completely in that disposal facility.

7 I don't know if it's -- maybe it is
8 something that NRC should think about in terms of
9 maybe packaging and maybe working in conjunction with
10 DOT to try to come up with another generation of
11 transport vehicles to where we can have some type of
12 variation of a Type B cask that can provide that
13 shielding and maybe safely protect the site workers
14 for a transfer into the ground of this material
15 without leaving that material behind for such a short
16 function, you know, just such a short function.

17 It is a shame that that has to happen
18 because I do think there are legitimate ways to
19 engineer and work your way around this without leaving
20 it behind. You know, we should recycle it. I mean,
21 these shieldings can be used over and over and over
22 again. It can be cleaned up.

23 So it is just something else to consider
24 because it really became -- you know, we even
25 discussed it, Richard and I. You know, we all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussed it as the end of Barnwell approached and we
2 were getting the submittals. And it was completely
3 within the regulatory framework, perfectly acceptable.

4 But I just had a real hard time. There's just a
5 short amount of time from point A to point B and the
6 impact, the long-term impact.

7 FACILITATOR CAMERON: Thank you, Mark.

8 And, Christine, before we go to Arjun, did
9 you just want to comment on it?

10 MS. GELLES: No.

11 FACILITATOR CAMERON: Okay. Let's go to
12 Arjun.

13 MR. MAKHIJANI: A couple of quick things.

14 Just as a factual matter, the less than five-year
15 radionuclides and cobalt-60 have no upper limit for
16 classes B and C in part 61. So currently they are not
17 limited. They are limited by these practical
18 considerations that Mark talked about.

19 MR. YEAGER: Just the dose rate.

20 MR. MAKHIJANI: Yes, that's right and the
21 transport and how you package it and so on. But there
22 is no concentration limit for cobalt-60 in part 61,
23 parts B and C. So that question doesn't arise.

24 MR. RYAN: There is to some of the other
25 radionuclides in the stellite, though.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MAKHIJANI: Yes, yes. Well, for
2 cobalt-60, there isn't. And for tritium, there isn't.

3 The practical thing in CLI-05-05 is that
4 the Commission affirmed in that that subpart C limits
5 are the things that govern. Whether you are at a deep
6 disposal for greater than class C or shallow disposal
7 doesn't really matter because of performance
8 objectives.

9 That is what essentially I'm saying is you
10 have got a regulation. You are going to a process
11 that is risk-informed. All right. We will revisit
12 all of these things.

13 But for now if you affirm what is in
14 subpart C in the institutional control requirements,
15 you know, the parts of the regulation that are not on
16 the table, it will simplify things and be in the
17 spirit of what you just read out from CLI-05-05.

18 FACILITATOR CAMERON: Okay. Thank you,
19 Arjun.

20 Let's go to Bill and Christine and Diane,
21 then to the audience. And then we will break for
22 lunch.

23 MR. DORNSIFE: First, a facetious comment.
24 I mean, we could just put all of these problem
25 high-activity waste streams in a DU container, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is exempt form a shielding standpoint, and dispose of
2 the whole thing.

3 FACILITATOR CAMERON: See, people don't
4 know when you are being facetious.

5 (Laughter.)

6 FACILITATOR CAMERON: So it is good that
7 you have sort of labeled that. You labeled it in
8 advance.

9 MR. DORNIFE: In terms of the question
10 that is on the table, I would have absolutely no
11 problem with the NRC staff going back to the
12 Commission and saying, "Hey, site-specific analysis,
13 that's all you need to do for any waste stream."

14 My concern, though, is how you ensure
15 there is a level playing field from a competition
16 standpoint, meaning you are likely to get -- well,
17 first of all, you have the issue that I mentioned
18 earlier of do, in fact, all of the sites meet the part
19 61 technical requirements?

20 And, secondly, you know, the way an
21 agreement state might implement performance assessment
22 requirements, are you going to get a widely different
23 answer in terms of how much DU could be disposed of?

24 FACILITATOR CAMERON: Okay. Thanks, Bill.
25 Christine?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. GELLES: Thanks. And it's really a
2 question, a clarifying question, for Larry.

3 I don't have a copy of the SRM in front of
4 me, but I don't recall a specific assignment from the
5 Commission to do anything with unique waste streams
6 that wasn't directly tied to the question of
7 developing this limited rulemaking for a site-specific
8 performance assessment for unique waste streams,
9 including DU. Did they ask you? And there may well
10 be one. I just don't recall.

11 So my question was, I just wanted to make
12 sure if you went back with the answer that you asked
13 the group to respond to, that doesn't obviate the
14 planned limited rulemaking to do a site-specific
15 performance assessment, right? I am just kind of
16 confused about what question you are trying to answer.

17 FACILITATOR CAMERON: Okay. But, you
18 know, the --

19 MR. CAMPER: I don't have the SRM in front
20 of me. So I have to be cautioned how I answer your
21 question.

22 Clearly we did talk about this unique
23 waste stream concept in the SECY. I don't remember if
24 they word "unique waste stream" in the SRM or not. We
25 will have to find that. So reserve the right. Do you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have that? Yes. Priya, thank you. Priya is always
2 there when we need her.

3 In the SRM, it says -- yes. Here we go.
4 In the SRM, it says, "As an initial approach to
5 addressing the complicated issue, the Commission has
6 approved the staff's recommended option 2 to proceed
7 with rulemaking in 10 CFR part 61 to specify a
8 requirement for a site-specific analysis for the
9 disposal of large quantities of depleted uranium and
10 the technical requirements for such an analysis."

11 We sought clarification from the
12 Commission staff. And they intended for that to also
13 capture unique waste streams. But they did not choose
14 to modify the SRM following that inquiry.

15 MS. GELLES: And they specifically asked
16 you to identify --

17 MR. CAMPER: Well, we talked about it. We
18 talked in the SECY about the need to address this
19 question of unique waste stream. And, as I said a
20 moment ago, what was on our mind, really, was if we
21 are going to proceed with a rulemaking, let's take
22 this opportunity to perhaps not repeat what took place
23 in 1979-1980 and no criticism intended toward those
24 folks. They did a very fine job. But let's learn
25 from that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 My point in listening to all of this was I
2 am hearing this august group say this thing of trying
3 to identify what is a unique waste stream raises as
4 many problems as it does answers.

5 My point in listening to all of this was I
6 thought, well, maybe the thing to do is go back to the
7 Commission and repeat what the Commission said in the
8 hearing citation that I had pointed out. And that is
9 part C, performance objectives, case-by-case basis, up
10 to and including rulemaking if needed.

11 And maybe that is the answer of this
12 dilemma of trying to identify what is a unique waste
13 stream. And I was trying to pulse you guys to see
14 what you thought.

15 MS. GELLES: And I had the same reaction,
16 I believe, that Tom and Bill have. I would just offer
17 that perhaps you would consider explicitly stating
18 that "By virtue of the limited rulemaking that will
19 establish a site-specific performance assessment
20 framework for evaluating DU," that same framework can
21 be used to assess any other waste stream that hadn't
22 previously been analyzed as being acceptable at that
23 site.

24 So I think the answer is this limited
25 rulemaking is going to be responsive and solve any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unanswerd questions about unique waste streams
2 without you necessarily having to define what is a
3 unique waste stream or establishing a separate process
4 for addressing them.

5 FACILITATOR CAMERON: Thanks. Thanks for
6 adding that, Christine.

7 Diane? And then we will go.

8 MS. D'ARRIGO: I understand that 10 CFR
9 61.55 is not in subpart C. I just wanted to say that
10 our position would be not to reaffirm the class A, B,
11 C classifications as they are now. I think that that
12 is problematic.

13 Arjun was talking about reaffirming part
14 C. I wanted to affirm that we still have concerns
15 with the A, B, C classification as it is. So it's
16 maybe confusing, rather than clarifying, but that is
17 what I am trying to share.

18 FACILITATOR CAMERON: Okay. Thanks,
19 Diane.

20 We are going to look at the long-term
21 classification rulemaking later on. So talk about
22 that. Audience? John? Please introduce yourself.

23 MR. GREEVES: John Greeves, Talisman
24 International.

25 Dave started this with looking for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 simple, crisp answer. I think you have found it
2 around the table. The primary criteria are the
3 performance objectives. They trump everything else.

4 There are a number of examples where the
5 staff and, in fact, DOE have used those performance
6 objectives wisely and they didn't need a rule change
7 to do that.

8 The staff, for example -- we can go back
9 and look at the Trojan reactor vessel. That was done
10 without a rule change. The staff very recently has a
11 large body of evidence having done two waste
12 determinations without a rule change.

13 What they did do was they had to look at a
14 period of performance. And what they did do was look
15 at 500-millirem as a limit for an intruder.

16 The department does this regularly. As an
17 aside, are we bold enough to suggest that maybe at a
18 future meeting, the department should come and give a
19 little cameo discussion of how they do the special
20 analysis. They have performance assessments up
21 running at all times for their disposal sites.

22 Recently I worked on a project that got a
23 special analysis required. It took them two weeks to
24 come up with the answer. Why were they able to get
25 that answer in two weeks? Because they had a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 performance assessment up running, available, and they
2 had a process and a protocol to do that. I think it
3 would be very helpful for a future meeting to have
4 that process protocol presented. I just suggest that.

5 But, full circle, lots of discussion about
6 the performance objectives. My individual view is the
7 performance objectives already do what is needed,
8 though. Some are not interpreting that way. They
9 need to be maybe perfected to include a period of
10 performance and intruder limits, which, frankly, the
11 staff in actually implementing in waste determination
12 analyses. If they were in there, I think you would
13 have what you need.

14 Sorry to be windy about that, but --

15 FACILITATOR CAMERON: Thank you very much,
16 John.

17 Anybody else in the audience?

18 (No response.)

19 FACILITATOR CAMERON: Okay. Larry, you
20 had an answer for a question that --

21 MR. CAMPER: Well, I have an answer, but
22 --

23 FACILITATOR CAMERON: -- or maybe not an
24 answer.

25 MR. CAMPER: In keeping with Tom's point

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about our natural gas behavior filling voids, in this
2 case, it will be an information void, Tom. I have an
3 answer, but I will tell you before I give you the
4 answer that the answer raises as many questions as it
5 does provide an answer.

6 I think it was Bill and/or Diane earlier
7 this morning answering this question in so any words
8 about a state passing a moratorium, banning a disposal
9 of a certain waste stream.

10 We did talk with the Office of General
11 Counsel. If a state were to pass a moratorium banning
12 a disposal of a certain waste stream across the board,
13 that raises the compatibility issue.

14 Now, what does that mean? I don't know.
15 That isn't what I am saying. I am raising as many
16 questions as it does provide answers. But a blanket
17 moratorium of a waste class does raise a compatibility
18 issue. However, a state can do that on a
19 site-by-site-specific license basis and, in fact, has
20 done that.

21 So that is an answer to the question that
22 was raised, but, as I say, when you start talking
23 about it raises a compatibility issue, one can
24 envision a litany of other questions that would follow
25 on the heels of that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. D'ARRIGO: Where has it been done?

2 MR. CAMPER: I beg your pardon?

3 MS. D'ARRIGO: Where has it been done?

4 MR. CAMPER: Where has it been done?

5 State of Utah has permitted class B and class C waste,
6 although the license was withdrawn.

7 MR. DORNSIFE: What was your reaction to
8 our license --

9 MR. CAMPER: As I say, this raises as many
10 questions as it does answers. We have never pursued
11 this issue of a compatibility problem. But you asked
12 the question about a state providing a moratorium
13 banning a class of waste. And the Office of General
14 Counsel's view is that raises a compatibility issue.

15 Now, what does that mean? And how would
16 that play out? And what are the mechanics? And what
17 other questions does it raise? I can't answer them at
18 this moment, but that's why I said before I answer
19 this, it raises as many questions as it answers.

20 FACILITATOR CAMERON: Thank you. And
21 thank our colleagues from the Office of General
22 Counsel on this.

23 We are going to go to compatibility when
24 we come back. There has been a number of issues
25 raised about that. So if we need to revisit this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue, then we will do that.

2 How about 1:25? That is a strange time.

3 Okay. I know you need that certainty. 1:30. 1:30.

4 (Whereupon, a luncheon recess was taken at
5 12:19 p.m.)

6 FACILITATOR CAMERON: On the record.
7 Okay, everybody. Welcome back and if any of you who
8 have come in have not filled out a card that's out at
9 the desk Gregory Suber has them right here. If you
10 could just fill that out, then that will allow us to
11 get information to you. You don't have to fill it
12 out, but if you do it will allow us to get information
13 to you about this subject.

14 We're going to go to a very, I think,
15 unique and successful part of the NRC program which is
16 the Agreement State program and we have Duncan White
17 with us to tee it up and it will be a little bit
18 longer than the usual tee-up so that he can explain
19 some of the parameters of the program and how the NRC
20 works with the states.

21 Duncan, are you ready to do this? He's
22 not ready, but he'll do it anyway. Okay. Thanks,
23 Duncan.

24 MR. WHITE: Good afternoon, everybody.
25 Again, I'm Duncan White. I'm the Branch Chief for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Agreement State Programs Branch in the Division of
2 Material, Safety and State Agreements and part of
3 FSME.

4 I'm going to talk about compatibility of
5 agreement states and NRC regulations. As Larry
6 pointed out before lunch, compatibility is a complex
7 issue and just in the 10 or 15 minutes I'm going to
8 talk I'll hopefully give you a little flavor of it and
9 it will hopefully open the discuss up.

10 Before we talk about compatibility
11 specifically and the role it plays with agreement
12 states and NRC regulations, I wanted to provide some
13 background on compatibility in the NRC's Agreement
14 State Program. The Agreement State Program has been
15 around for about 50 years. This is not new. Congress
16 passed Section 274 of the Atomic Energy Act in
17 response to the states' interest in radiation
18 protection and provided a mechanism to return certain
19 classes of radioactive materials back to the states.

20 So what is an agreement state? On the
21 surface, it's just a formal agreement between the
22 governor and the NRC chairman in which the NRC
23 discontinues certain authorities and the state assumes
24 the regulation of certain classes of radioactive
25 materials within its borders. The authorities assumed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 by the state normally include the regulation of
2 byproduct, source and special nuclear material that's
3 in a critical mass. It may also include the authority
4 to regulate the evaluation of sealed sources and
5 devices, low-level waste disposal and uranium
6 recovery.

7 States have become agreement states for a
8 number of reasons. Recently, the assumption of NARM
9 authority by the NRC under the Energy Policy Act of
10 2005 was a driving force for Virginia and New Jersey
11 to become agreement states. Really, a motivator for
12 nearly all states to become agreement states is to
13 bring the various facets of radiation protection into
14 one program under one roof.

15 State regulation allows the state to
16 exercise regulatory oversight tailored to their
17 regional or local conditions. Also lower fees in the
18 NRC and maintaining the funds locally are also a
19 strong incentive.

20 Besides the distinction feature of
21 discontinuing certain authorities instead of the
22 typical Federal-state relationship of a delegated
23 program, the Congress envisioned the agreement state
24 program to promote an orderly, regulatory pattern and
25 encourage the states and NRC to cooperate in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 development of radiation protection standards.
2 Although the NRC discontinues its regulatory authority
3 in the agreement state, it does maintain an oversight
4 responsibility to ensure that agreement states are
5 adequate to protect public health and safety and
6 compatible with NRC regulations.

7 Now I understand earlier in the workshop
8 there was a question raised about what happens if
9 states, and again germane to here, passes a moratorium
10 to ban certain classes of low-level waste. That's
11 again a very hard question to answer and there's no --
12 Really I don't really have a good answer for that
13 because it really depends on the circumstances of what
14 that ban or moratorium is. And, without knowing the
15 specific case circumstances, it would be not prudent
16 to speculate anymore on that.

17 The keys elements of an agreement state
18 program can be summarized into four broad areas.
19 These areas also serve as the basis for the review of
20 an agreement state application for a prospective
21 agreement state: a licensing inspection and incident
22 response program designed to adequately protect public
23 health and safety in compatibility with the NRC
24 regulations; a program that has sufficient staff and
25 technical training to regulate the licensees under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their jurisdictions. Although the NRC does pay for
2 training for inspectors and license reviewers, the
3 state may need to hire an individuals with more
4 specialized disciplines required for seal source and
5 device, low-level waste and uranium recovery.

6 With the exception of NRC money for
7 training, the states is required to fund their
8 program. This is done with users' fees and for most
9 states some allocations from general funds. And to
10 maintain compatibility with NRC regulations, each
11 agreement state needs enabling statutes and
12 regulations consist with their state's administrative
13 law.

14 Agreement States play a prominent role in
15 the rad material in the United States. There are
16 currently 36 Agreement States which regulate 85
17 percent of the approximate 22,000 reactor material
18 licenses in this country. New Jersey is on schedule
19 to become the 37th Agreement State at the end of this
20 month. As already mentioned in the workshop, the four
21 licensed low-level waste sites are located all in
22 Agreement States and the major waste processors in
23 this country are also all located in Agreement States.

24 As indicated earlier, Congress requires
25 the NRC to maintain oversight of the Agreement States.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is achieved through the Integrated Materials
2 Performance Evaluation Program or IMPEP. The IMPEP is
3 not only used to review Agreement States, but it's
4 also used to review the NRC's Regional Materials
5 Inspection and Licensing Program and the Headquarter
6 Space, Sealed Source and Device Evaluation Program.
7 IMPEP reviews the performance base and focused on
8 outcomes. The reviews do not look at all activities
9 of the program, but focus on those that have
10 particular health and safety significance. If an
11 Agreement State's performance is lacking in a
12 particular area, the review will examine that aspect
13 of the program and dig deep to determine what the root
14 cause of that performance is.

15 The IMPEP reviews are performed at least
16 every four years by a team of three to eight NRC and
17 Agreement State technical staff. An onsite review is
18 normally completed in a week but may also require
19 additional review in the office or a longer time
20 onsite.

21 The team will accompany state or NRC
22 inspectors during the IMPEP in actual inspections of
23 the licensees. The team will look at five common
24 performance indicators for the state or region's
25 Licensing, Inspection and Incident Allegation Program.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Additionally, Agreement States are reviewed for
2 compatibility and for low-level waste, uranium
3 recovery or sealed sources device if the state
4 conducts those activities and has the authority.

5 The team's report is reviewed by senior
6 management at the NRC and an Agreement State program
7 director before the report's findings are finalized.
8 This management review board is conducted at a public
9 meeting held about three months after the end of the
10 review.

11 The performance criteria used by the team
12 to evaluate the state or the region's program is
13 detailed in Management Directive 5.6. Management
14 directives contain the policies and procedures that
15 govern the internal NRC functions necessary for the
16 agency to accomplish its regulatory mission. The
17 IMPEP program also has a number of implementing
18 procedures issued by our office that are designed to
19 provide specific guidance to the team on individual
20 indicators.

21 With that setup, now we can talk about
22 compatibility a little bit. How is compatibility
23 related to what we're talking about in this workshop?

24 As indicated earlier, Section 274 of the Atomic
25 Energy Act requires the NRC to ensure that an orderly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regulatory pattern between the 36 Agreement States and
2 the NRC be maintained with the NRC regulations serving
3 as the benchmark for the compatibility requirements.
4 These require that the regulations of any agreement
5 state contain no gaps, conflicts or duplications with
6 the other 36 different jurisdictions.

7 Compatibility does not mean that
8 everyone's regulations are the same. It was the
9 intent of Congress to allow Agreement States to have
10 some flexibility in regulating radioactive material
11 under their jurisdiction to accommodate local and
12 regional concerns.

13 Compatibility not only relates to
14 regulation but also to legally binding requirements
15 such as license conditions and to program elements
16 such as the program's implementing procedures. The
17 process that the NRC uses to determine the
18 compatibility of the regulation, legally binding
19 requirements and programs elements are found in
20 Management Directive 5.6.

21 So how do we apply this concept of
22 compatibility? In the Management Directive, there is
23 an evaluation process to determine the compatibility
24 category for each section or even subsection of the
25 NRC regulations that are required for agreement state

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compatibility. There are six compatibility categories
2 that can divide our discussion here into three groups.

3 For Categories A and B, the agreement
4 state regulations must be essentially identical to the
5 NRC's. This means essentially word for word. The
6 basis for each category is different, but the result
7 is the same. An example of a regulation that is
8 Category A would be the basic dose limit of 5 rem per
9 year as you find in Part 20. an example of Category B
10 would be transportation regulations in Part 71.

11 For Category C, the Agreement State
12 regulations must contain the essential objective of
13 the section or subsection of the regulation. For
14 category Health and Safety, the regulations must
15 embody the essential objectives for health and safety.

16 For these compatibility categories, the agreement
17 state can be more restrictive than the NRC.

18 This is an example here of Compatibility
19 Category C, the many requirements in the regulations
20 to perform a radiation survey. The NRC regulation may
21 specify how that survey is done and how frequently it
22 should be done. To meet the essential objectives, the
23 agreement state regulation will also require the
24 performance of a radiation survey. That's the
25 essential objective. But the agreement state may

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 choose to require the survey to be done in a different
2 manner than the NRC and at a more frequent interval.
3 This is acceptable and the NRC will conclude that the
4 state is compatible with regard to this requirement.

5 For the third category, these are the last
6 two categories, Category D is not required for
7 compatibility, but the Agreement States may choose to
8 adopt the particular section of the regulations.
9 Category NRC cannot be adopted by the agreement states
10 since that authority has not been transferred to the
11 state. An example of the Category NRC would be review
12 and approval of Type B shipping containers you find in
13 Part 71.

14 Here are some examples of compatibility
15 categories for sections of Part 61. It's not uncommon
16 for different sections or subsections of one part of
17 the NRC regulations to contain different compatibility
18 requirements. As you can see, the agreement states
19 are required to have essentially identical regulations
20 for 61.41 and 61.55 but have some flexibility to
21 impose more restrictive requirements in 61.56.

22 During the workshop here, we were talking
23 about the proposed inclusion of a waste classification
24 specific to DU. When the NRC does propose such a new
25 classification or if the NRC proposes a classification

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for DU under 61.55 the compatibility category proposed
2 by the NRC will in all likelihood be the same as it is
3 now and that's Category B. If the final rule
4 designates the compatibility category as B, then the
5 Agreement States would have to adopt the same waste
6 classification as the NRC.

7 So how does a performance assessment fit
8 into compatibility? A performance assessment is
9 performed to meet the dose requirements under 61.41 of
10 the current structure and how the Agreement State
11 performs the performance assessment will be part of
12 the Agreement State's implementing procedures. The
13 Agreement State's implementing procedures are part of
14 what are referred to in an earlier slide as program
15 elements.

16 The Agreement State's implementing
17 procedures for low-level waste are considered
18 Compatibility C. Again, the state has some
19 flexibility in what they can use.

20 If the Agreement State has to adopt
21 essentially identical regulations for the new DU
22 classification since the NRC has determined it to be
23 Compatibility B, how can the public input into the
24 process? Yesterday, Andrew Carrera provided an
25 overview of the NRC rulemaking process. The figure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here is similar to the one he showed yesterday, but
2 emphasizes compatibility.

3 The Rulemaking Working Group makes the
4 initial compatibility determination. During the
5 internal review process, the proposed rule and
6 compatibility determination are reviewed by a
7 compatibility committee consisting of senior NRC and
8 Agreement State staff to ensure consistent application
9 of Management Directive 5.9 in the implementation of
10 the rule.

11 After the public comments are reviewed and
12 evaluated, NRC staff prepares the final rule with the
13 compatibility designations. Before the final rule is
14 published, the Commission will review its
15 compatibility designations. The Commission has the
16 final say on the rule's compatibility.

17 Agreement State normally have three years
18 after the date the NRC implements their final rule to
19 adopt compatible regulations. The Commission could
20 require a shorter period of time for the Agreement
21 States to adopt compatible regulations. In fact, they
22 did this with the Waste Manifest Rule back in the
23 1990s.

24 As you can see from the figure, once the
25 NRC adopts the rule and the regulation is final, then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Agreement State has to adopt the rule. There is
2 really not much the Agreement State can do to change
3 the language in the rule because of the compatibility
4 or may not be able to change the language in the rule
5 because of compatibility. The opportunity for
6 greatest impact and influence on input on the
7 compatibility designation comes when the NRC is
8 promulgating their rules.

9 The NRC reviews the draft and final
10 versions of all Agreement State regulations to ensure
11 that they are compatible with the NRC regulations.
12 This process is also applicable to proposed state
13 statute changes that impact the Agreement State
14 program. In addition to the review by the NRC
15 technical staff, the NRC's Office of General Counsel
16 also reviews each draft and final rule.

17 NRC staff prepares a written response to
18 the Agreement State that is reviewed and signed by NRC
19 management. The NRC review for each agreement state
20 is tracked and is publicly available on FSME public
21 website.

22 As I said, our compatibility process as
23 well as impact on the rest of the policy and
24 procedures that govern the Agreement State program are
25 publicly available on the FSME public website and that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 website is linked from our main website at nrc.gov.
2 The regulation toolbox has a complete breakdown of all
3 NRC regulations required for Agreement State
4 compatibility.

5 That concludes my opening remarks and
6 answer questions.

7 FACILITATOR CAMERON: Thank you, Duncan,
8 and there may be more -- it's not only going to be
9 questions obviously, but questions and discussion.
10 There may be more questions about this part of the
11 program. Let me ask if there are questions first
12 before we go to discussion.

13 Bill.

14 MR. DORNIFE: I guess I would ask. Does
15 NRC ever conduct any audits like you require everybody
16 else to do of how effectively these management
17 directives are implemented?

18 MR. WHITE: Just recently, earlier this
19 year, the IG, the NRC's IG, finished an audit of the
20 Agreement State program itself, looked at various
21 aspects of it and made some recommendations on how to
22 propose changes, effective changes, we may want to
23 look at. So the management directives are just
24 periodically -- Specific questions about management
25 directives.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DORNSIFE: Well, I'm talking
2 specifically whether compatibility requirements are
3 uniformly enforced by all the states.

4 MR. WHITE: Compatibility is reviewed
5 during IMPEP and that's one of the things that we do
6 look at.

7 MR. DORNSIFE: But I'm talking more
8 broadly, you know, look at one state versus another
9 state and the same rules are always being applied the
10 same way.

11 MR. WHITE: As I said in my remarks, rules
12 may not necessarily be -- have a compatibility
13 designation that allows the states to have some
14 flexibility in how they adopt them and how they
15 implement them. Again, they're not going to be all
16 the same. We don't have -- Everyone doesn't have --
17 There are 36 Agreement States and the NRC. All don't
18 have the same regulation. There are variations
19 between them. So you could go from one state to
20 another. The same requirement. You may see some
21 differences in them.

22 MR. DORNSIFE: No. I understand that.
23 You know, my question is more -- Well, I'll give you
24 an example. Even though you say that the waste
25 classification system is Category B and I assume the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nomenclature has changed over the years, but the
2 concept has been there from day one. You allowed
3 Pennsylvania to come up with Class C limits for
4 thorium and uranium. Now, on the surface, that would
5 say, "Gee. That's really going beyond what you're
6 saying is applicable to this particular category."
7 And I'm wondering out of that is there any management
8 program, whether it be audit or anything, that
9 periodically assesses how well you're implementing
10 your policy.

11 FACILITATOR CAMERON: How are issues that
12 come up where there might be a potential inconsistency
13 between what one state is doing and another state is
14 doing in regard to a particular topic? How are those
15 issues raised and considered? Is there a mechanism
16 just in the internal management of the program where
17 issues like that might be checked? In other words,
18 when you go out and do an IMPEP review, pretty
19 comprehensive review, is it on your mind that we need
20 to take a look at how the state is implementing this
21 program not just for purposes of comparing it to the
22 NRC requirements but in terms of how other states
23 might be doing that? Does the Organization of
24 Agreement States look at these types of issues?

25 I think Bill is trying to see how these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issues might be raised, Duncan.

2 MR. DORNSIFE: Well, just another
3 clarification, Chip, and even more specific, let's say
4 a licensee felt that because of the way an agreement
5 state has been approved to do something that they're
6 at an unfair competitive advantage. Is there a
7 process to get some redress for that issue?

8 FACILITATOR CAMERON: How would an unnamed
9 licensee approach the NRC on something like that,
10 Duncan?

11 MR. WHITE: This can be done a couple
12 different ways. One way, sometimes the licensee has
13 approached us directly and indicate that they believe
14 a certain practice in a certain agreement state is not
15 consistent with our policies and we would look into
16 that specifically. Sometimes these things are found,
17 sometimes they're found, during IMPEP reviews where
18 we've found some cases where how the state is either
19 maybe not so much in regulations but certainly how
20 they implement their statutes and procedures. There
21 may be some way they're being inconsistent in that and
22 during IMPEP we would address that and point that out
23 to them.

24 It can be something as simple if they're
25 licensing something they shouldn't be licensing or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they have a -- We have not looked at a regulation in a
2 long time and they didn't submit it to us and we have
3 to have them change it. I mean it could take various
4 different forms. But it's been brought to our
5 attention in many different ways.

6 MR. DORNSIFE: But you're somewhat -- I
7 think you're somewhat limited in how you enforce your
8 will upon the states. I mean if they say no, your
9 only option is to pull the agreement and we know that
10 probably isn't going to occur for most issues unless
11 the --

12 (Off the record comment.)

13 FACILITATOR CAMERON: And, Duncan, another
14 question that may allow you to comment on Bill's
15 observation is that even when there is a compatibility
16 level that requires something of the states and the
17 regulations you still look at their entire program of
18 implementation to see if that objective, overall
19 objective, is being met. In other words, there is
20 some judgment involved and, in the example Bill gave,
21 there are discussions with the state over what can be
22 done to remedy the situation. Is that correct?

23 MR. WHITE: Yes. Part of the IMPEP
24 process we do. We could very well make
25 recommendations and again effectively we ask them to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 take action to change it and we do track those things.

2 Again, there's been cases where we've tracked
3 recommendations through two or three IMPEP cycles to
4 get them to fix a particular problem.

5 We had one particular state, for example,
6 who had dose limits, equivalent to Part 20 of our
7 regulations who had dose limits, which were not
8 compatible with ours and we eventually kept on them
9 until they changed them. Again, I don't know why they
10 did that in the first place, but the discrepancy was
11 discovered and we told them to fix it and we kept on
12 them about it.

13 And again, part of that, sometimes part of
14 that pressure comes from licensees, too. Licensees
15 would look at the -- who have to comply with those
16 regulations were smart enough to know and said, "Gee.

17 That's different from the NRC's and I know that has
18 to be the same." And they may bring it our attention
19 or we would say we would follow up on that. Again, we
20 may do it through IMPEP. We may do it -- look at it
21 separate as a performance concern, again, because we
22 do the IMPEP only like about every four years unless
23 the program has a number of performance issues which
24 we would go back even more frequently.

25 FACILITATOR CAMERON: And, Bill, I know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you may have more and we'll come back to you. But
2 let's hear from Felix and Diane and Arjun. Felix.

3 MR. KILLAR: I have two questions to make
4 sure I understand the compatibility issue particularly
5 with the Category C since that's the only one that's
6 allowed to be more restrictive. Under EPA's rules for
7 more restrictive compatibility, states have the
8 ability to do that. However, they have to justify the
9 reason why they feel that their regulation should be
10 more restrictive than the EPA's.

11 The first question, does the NRC have any
12 such similar requirement that if a state was to put in
13 something that's more restrictive than the existing
14 NRC regulations the state has to justify why they want
15 to provide that more restrictive requirement.

16 MR. WHITE: No, there isn't.

17 MR. KILLAR: Okay. The second one which
18 is related because I figured that was the answer to
19 the first one, if a state does have a more restrictive
20 requirement, does the NRC look at the basis of the
21 more restrictive requirement for one purpose and that
22 is to determine if the NRC regulation is maybe
23 inadequate in that area and so that way they felt that
24 the regulation should be brought up to where the state
25 has determined or if they feel that the determination

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of the state, the models, technology, whatever they
2 did to come to that decision has something that
3 they've identified that the NRC hasn't recognized.

4 Because I know, we deal with, I deal with
5 a lot of source and Part 30 materials and we have a
6 lot of issues, a lot of those, because of the
7 inconsistencies between states. We'd like to see the
8 NRC kind of help get some of the inconsistencies
9 cleared out.

10 MR. WHITE: Yes. There have been a couple
11 of instances where the agreement state may have
12 implemented certain regulations and after a number of
13 years we've actually changed ours because we've found
14 out how the state is implementing theirs. We found
15 out that it's equally protective of the public health
16 and safety and again it allows existing state practice
17 to continue and we will change ours. We necessarily
18 change our regulation. Sometimes we would have to,
19 but sometimes we may just change the compatibility to
20 allow a little bit more flexibility for other states
21 to do that and again it showing that there's a
22 national program that's kept in place. But again, we
23 have in case reacted to it that way.

24 FACILITATOR CAMERON: Great. Diane?

25 MS. D'ARRIGO: My question has to do with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think transferability. When an agreement state
2 licenses company, be they processors or transporters -
3 - I think those would be the two that I'm thinking of
4 -- the way I understand it is that once they get an
5 agreement state license they can also operate in other
6 states.

7 MR. WHITE: Yes. One of the requirements
8 in the agreement is that the NRC and the other
9 agreement states will recognize another agreement
10 state's license. But the agreement state license they
11 have to abide by the requirements of that agreement
12 state license, again, if it's state law -- I'll just
13 use this for example. There's a Pennsylvania licensee
14 and they go to work in an NRC jurisdiction. They have
15 to comply with the Pennsylvania requirements. They
16 have to comply with the NRC requirements.

17 Also I should point out that the
18 Pennsylvania license has to authorized licensees to
19 work outside Pennsylvania. Usually it has temporary -
20 - A license like that would have something called
21 temporary job sites. It allows them, authorizes them,
22 to work outside their home state.

23 MS. D'ARRIGO: Does the state then --
24 Isn't the licensing the company, but the company is
25 working in their -- Let's say you've got a Tennessee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 company that's working in Maryland. Does Maryland
2 need to be notified?

3 MR. WHITE: In almost all cases, yes.

4 MS. D'ARRIGO: That's required by NRC? I
5 was trying to figure out where that --

6 MR. WHITE: Most states require that.

7 MS. D'ARRIGO: So Maryland would require
8 notification of --

9 MR. WHITE: Maryland would require --

10 MS. D'ARRIGO: But it's -- Okay. It's up
11 to the state in which the activity is taking place.

12 MR. WHITE: Yeah.

13 MS. D'ARRIGO: So let's say it's not even
14 an agreement state. Let's say they were going into
15 Indiana or -- I don't know. Who is not an agreement
16 state?

17 MR. WHITE: That's NRC's jurisdiction.
18 They would have to notify the NRC.

19 MS. D'ARRIGO: And they would have to let
20 you know that I'm cleaning up this facility.

21 MR. WHITE: Yes.

22 MS. D'ARRIGO: Okay.

23 MR. WHITE: That's correct.

24 FACILITATOR CAMERON: And Arjun?

25 MR. MAKHIJANI: A question at this stage.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Did the IG's audit find major deficiencies and, if
2 so, what were they?

3 MR. WHITE: What audit found, the audit
4 recommended doing another lessons -- We had done
5 lessons learned in our program in about 2002. It
6 recommended doing another one of those lessons learned
7 which we're planning to do. It also recommended some
8 changes to some of our procedures to make them more --
9 to adapt them to some of the issues that have more
10 recently come up.

11 Specifically, one of them was the pandemic
12 and continued operations. Again, both of the NRC and
13 all the states have pandemic-type plans or COOP-type
14 plans and again IG was looking to see if there was
15 more inaction and more cooperation between the two of
16 them and that was another one of the major findings on
17 that.

18 FACILITATOR CAMERON: And Tom?

19 MR. MAGETTE: Duncan, during your
20 presentation, you discussed briefly the notion of a
21 moratorium and how that's a challenging question and
22 it would depend upon the specifics of the case as to
23 what your interpretation would be. Could you give me
24 some examples of either a real or for that matter just
25 a hypothetical case where you would come in and say,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 "No, you can't do that" or where you conversing might
2 come in and say -- I don't know what else you would
3 say. If they're not consistent with the regs I'm not
4 sure how you would say, "That's okay."

5 MR. WHITE: I mean that's a hard one, but
6 one example I guess hypothetically would be that if
7 the licensing authority required the operator of a
8 site to do a performance assessment and they found
9 they can't take any more of a particular type of waste
10 in that site there because the performance dictated
11 that the dose limits would, you know, raise to a
12 certain level that would exceed the regulations. They
13 may require them to and they may stop them from taking
14 in that type of waste. That would be a reasonable
15 thing to do. It effectively shuts off them bringing
16 material in, but that's one possible thing where it
17 might be acceptable.

18 MR. MAGETTE: But wouldn't you do the same
19 thing? I don't see how that would be inconsistent
20 with how the NRC rule in a similar case if you looked
21 at a performance assessment and said, "Gee, you
22 clearly exceed the dose limits in Subpart C." I mean,
23 I'm looking for a case where you've got -- you're
24 allowing something and an agreement state says, "Well,
25 I'm going to do something different" which in theory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in accordance with the regulations would not be
2 permissible. They would be at risk of losing their
3 agreement state status one would presume and yet you
4 said that it might not always be that end result. It
5 would depend on the specifics. I'm having a hard time
6 understanding what specific case would lead to it
7 being okay if, in fact, it's not consistent with, for
8 example, compatibility Category B. How do you get
9 there from here?

10 MR. WHITE: Again, I showed the chart on
11 my presentation where the 61.41, the requirements, is
12 Category A. It has to be the same as the NRC. That
13 again -- And under our current system to meet that you
14 would easily do a performance assessment to show that
15 you would not exceed that limit. You know, you would
16 use certain modeling and certain of the site and it's
17 very site-specific information to come up with that
18 determination and that may be the basis for them to
19 say, "No, we can't take anymore of this type of waste
20 on the site" for example. That may be their basis for
21 doing that.

22 MR. DORNSIFE: Just quickly, Tom, I think
23 you have a very good example in the fact that Utah
24 says you can't take B and C and your question will be
25 authorized under the Waste Classification System and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NRC has found that okay.

2 FACILITATOR CAMERON: Is that a helpful
3 example?

4 MR. MAGETTE: No.

5 (Laughter.)

6 No, I don't think it's necessarily
7 relevant.

8 (Laughter.)

9 It's not like we have a license. We
10 didn't apply for a license to take B and C waste, get
11 one and then have Utah say, "We don't want you to take
12 it after all."

13 MR. DORNSIFE: If you would apply, maybe
14 they would give you one.

15 MR. MAGETTE: No, we applied and we
16 withdrew it.

17 FACILITATOR CAMERON: Go ahead, Tom.
18 Finish.

19 MR. MAGETTE: We withdrew that
20 application. There was no application ever rejected
21 and frankly we think if we were to submit it and it
22 were to be reviewed that it would be found to be
23 technically acceptable. But we haven't gone through
24 that. We haven't done that. So that's why I don't
25 think it's applicable. If they had said, "No, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can't take B and C after all" and we're sitting there
2 holding a license, I would think that would in fact be
3 an example of something that wouldn't be allowed.

4 MR. WHITE: I think that's a good example.

5 I mean if you submit an application for B and C waste
6 and that application was technically acceptable and
7 the state decided not to accept it for nontechnical
8 reasons, I mean one could argue possibly that creates
9 a compatibility issue. Likewise, if there was a
10 technical reason for not accepting it, that's a very
11 different reason.

12 And they should put it out to people when
13 they apply for -- As you pointed out, people apply for
14 licenses. They apply to do certain activities and
15 they will be authorized for certain activities. They
16 don't get the whole kit and caboodle when they apply
17 for a license. "Oh, we'll give you all this extra
18 stuff, too." That doesn't happen that way and your
19 example is a very good demonstration of that. You
20 asked for Class A and they gave you Class A.

21 MR. MAGETTE: Right.

22 FACILITATOR CAMERON: Go ahead, Tom.

23 MR. MAGETTE: I was just also going to
24 make a comment. I mean if you have a follow-on.

25 FACILITATOR CAMERON: Well, I just was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wondering, Duncan, if there's anything that could be
2 helpful to Tom with that question, for example, from
3 the two-person radiography rule where some states were
4 implementing it differently than the NRC which they
5 might not have had the discretion to do that. But
6 they were achieving the objective, health and safety
7 objective, of the regulation and the NRC because the
8 NRC works with the agreement states as co-regulators
9 basically that there's a lot of room for discussion
10 and trying to understand what states are trying to do
11 and eventually I think the NRC changed its rules to
12 recognize that particular practice.

13 MR. WHITE: Right.

14 FACILITATOR CAMERON: Do you want to offer
15 anything on that? I don't know if that's going to --
16 It's a stark example for Tom.

17 MR. WHITE: Yes. But also I think points
18 out the complexity of dealing with this. Again, when
19 you talk about compatibility, it's easy to say, "It's
20 Compatibility B and these are the rules." That's not
21 necessarily the case.

22 Again, as I said, it's a partly -- This is
23 why we get lawyers. This is why everything we do is
24 reviewed by lawyers because we want to make sure that
25 we, you know -- We do sometimes get cases where states

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 come in with something that's not black and white and
2 we have to look at it carefully and decide that. And
3 again in the case of Chip was talking about and that
4 was the State of Texas, Texas in fact we had a
5 different interpretation of the two-man rule than the
6 State of Texas did and we had to come to some -- Once
7 we decided that the Texas interpretation was equally
8 as safe, then we accepted their approach to do that.

9 Again, the bottom line at the end of the
10 day we're worried about health and safety and
11 protecting people and, you know, we want to make sure
12 that's what we're doing.

13 FACILITATOR CAMERON: Okay. Tom, do you
14 have some more or should we go to Felix and Diane and
15 come back?

16 MR. MAGETTE: I just want to make a
17 comment.

18 FACILITATOR CAMERON: Go ahead.

19 MR. MAGETTE: And whatever order you want
20 to go in is fine.

21 FACILITATOR CAMERON: Yes. Go ahead. No,
22 do it please.

23 MR. MAGETTE: I mean I would like to
24 comment on this topic in general that Bill's raised
25 the question "Should there be a limit of some sort of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 acceptable floor?"

2 "An oakey-dokey level" I think was the
3 technical term he used or you used.

4 FACILITATOR CAMERON: No, he did. Please.

5 MR. MAGETTE: Okay. The ODL -- I'm not
6 using the DM (de minimus) word. No Latin here. And
7 without that that we have a complication that we have
8 a problem that there will be some sort of interim
9 state action over the course of this rulemaking.

10 My suggestion in response to that is I
11 think that we might have that anyway. But my comment
12 is that as I read your current regulations you're
13 talking about a modification of 61.55 in this
14 rulemaking which is compatibility Category B. I
15 presume that a new 61.55(a)(9) would also be a
16 compatibility Category B which is consistent with what
17 you said about changing a portion of your regulations.

18 I've also suggested that an amendment to
19 subpart C or 61.41 as a part of this process would be
20 in order. That's a compatibility Category A and so
21 that would not be a new section under a new paragraph.

22 So I think it would still clearly all be
23 compatibility Category A.

24 It seems to me that there's not a lot of
25 latitude for a state to do something different in a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case like this where the NRC is going through a
2 rulemaking that is extensive where you've developed a
3 lot of information, where you've created technical
4 basis, where you're clearly looked at the existing
5 Table 61.55 and said, "We're not changing the
6 classification of depleted uranium." So there seems
7 to be no basis for some other action by an agreement
8 state in the interim and I think that's what I heard
9 Larry say words to the effect of this morning that
10 that classification has not changed.

11 And so if this is not a case where it
12 would be clear that a state is not allowed any
13 latitude to do something. I don't know what would be.

14 So that's my comment. If there certainly should be
15 such a case where the continuation of current practice
16 should be continued in the interim, the NRC clearly
17 had the opportunity to suggest that that's not
18 appropriate. But we have multiple documents, whether
19 they be orders from the LES licensing case or the
20 SECY-08-0147 or the SRM in this specific proceeding
21 that the NRC has not taken that opportunity.

22 So I don't think it's reading too much
23 into that to suggest that that's a proper
24 interpretation. And that's my comment.

25 FACILITATOR CAMERON: And I think that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that's very clearly stated, too, Tom. And, Duncan, I
2 guess one final question for you as maybe one
3 observation is that the NRC has not too often been
4 presented with a case like that.

5 MR. WHITE: I can't recall anything. One
6 thing I wanted to comment on just because the
7 compatibility designation for a section is as it is
8 doesn't mean it always is that. It can change. If we
9 do add stuff, we will look at the new addition fresh
10 and determine if the compatibility category for that
11 subsection is appropriate or not. If it isn't, we'll
12 decide with something else.

13 And again we have numerous examples in our
14 regulations where we have subsections of a particular
15 part of the regulations have been different
16 compatibility designations. So we would have to look
17 at it again. It all depends on how the rule is
18 written. Again, we can predetermine what that is
19 until we see it, until we actually have language to
20 look at.

21 FACILITATOR CAMERON: And one issue for
22 all of you, I mean, when this proposed rule goes out
23 there's going to be a proposed compatibility
24 determination in there and people can comment on
25 whether they think that's the correct determination.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But it's also fair for people to comment that if this
2 is the determination that it should be pretty black
3 and white and should be enforced.

4 And you're giving us a comment on it now
5 which is helpful. We haven't heard too many comments
6 on in terms of this site-specific performance
7 assessment, what people's opinions are on what level
8 of compatibility and I guess that we don't need to get
9 stuck trying to decipher A, B, public health and
10 safety.

11 The question is really how much
12 flexibility should a state have in deciding how the
13 performance assessment is done or is it going to be
14 more rigid than that in that it has to be uniform?

15 Let's go to Diane and Felix and Arjun.
16 Diane.

17 MS. D'ARRIGO: This is a question about
18 whether, let's see, an agreement state will, let's
19 say, license facilities that can do things that the
20 NRC wouldn't necessarily allow and I'm concerned. The
21 thing I'm thinking about is Tennessee licensing
22 processors that have the authority themselves to
23 determine whether certain radioactive waste can then
24 go into unregulated facilities.

25 And I know NRC does that on a case-by-case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 basis and it seems to be more generic in Tennessee and
2 we've been told that there are other states that are
3 also doing this and I wanted to -- On the surface, it
4 looks like the state is doing something that's more
5 lax than what the NRC would do. I wanted to hear how
6 that jives.

7 MR. WHITE: That's something we will
8 certainly look at during an impact review. We look at
9 how they were doing that and what their basis for
10 doing it is. I can't say without knowing specifically
11 what Tennessee does. I really can't say anything more
12 right now about that aside for we would approach doing
13 it.

14 FACILITATOR CAMERON: And it may be I know
15 that Diane has a lot of questions about the Agreement
16 State Program works that don't necessarily come into
17 play in this particular rulemaking. But it may be
18 helpful --

19 MS. D'ARRIGO: Will this rulemaking be a
20 change in 10 CFR 61 perhaps or what do you -- what
21 were the constraints of my questions here?

22 FACILITATOR CAMERON: No, I was just
23 suggesting that obviously there's going to be a change
24 in Part 61 somewhere. I just was thinking about your
25 particular example about how that might apply to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 site-specific performance assessment and I'm not
2 saying it's not a legitimate question. I was going to
3 suggest that maybe some of the things that are outside
4 of this site-specific performance assessment category
5 --

6 MS. D'ARRIGO: The site-specific
7 performance assessment for depleted uranium and unique
8 waste going into a 10 CFR 61 facility?

9 FACILITATOR CAMERON: Basically. I'm just
10 suggesting that Duncan may want to talk to you offline
11 about perhaps a broad range of questions that you have
12 about agreement states --

13 MS. D'ARRIGO: I thought other people here
14 might also have some input on how that works on
15 whether other states are doing similar things.

16 FACILITATOR CAMERON: Okay. Well, Duncan,
17 I guess you've basically said that you didn't have --
18 Do you want to repeat what you said?

19 MR. WHITE: Yes. Sure. That's easy. I
20 think something like that we would look at during an
21 impact review of the State of Tennessee, I mean, how
22 they are doing that. Is this consistent with their
23 procedures and with what the regulations are? That's
24 what we would look at.

25 MS. D'ARRIGO: Well, I mean, with depleted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 uranium, does NRC allow incineration of depleted
2 uranium? I mean, we're talking about DU. So I'm just
3 trying to figure out how the fact that they license
4 the burning of depleted uranium and how that jives
5 with NRC regs. Is that considered more restrictive or
6 less restrictive?

7 FACILITATOR CAMERON: Did we -- Does the
8 NRC allow the burning of depleted uranium?

9 MR. WHITE: I don't know.

10 MS. D'ARRIGO: What was it?

11 MR. WHITE: I don't know.

12 MR. ESH: I don't know yet.

13 MS. D'ARRIGO: You don't know if NRC would
14 allow it.

15 FACILITATOR CAMERON: Because, yes, I mean
16 certainly we must have an answer for that. Is the
17 incineration of depleted uranium?

18 MR. ESH: I have no idea. Sorry.

19 FACILITATOR CAMERON: Dave, we're not
20 getting this on the -- You're going to have to come to
21 the microphone.

22 Diane, is this based on --

23 MS. D'ARRIGO: Well, this is the depleted
24 uranium meeting. I have some knowledge of depleted
25 uranium issues in that state which I've questioned

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whether they are more lax, less lax, how that
2 particular amendment that the state gives, how that --
3 Is that stricter than Federal? Is it consistent with
4 Federal?

5 FACILITATOR CAMERON: So is Tennessee
6 allowing the incineration of depleted uranium?

7 MS. D'ARRIGO: Yes, at Aerojet.

8 FACILITATOR CAMERON: Okay. Larry.

9 MR. CAMPER: I would suggest that what we
10 do, Diane, is talk with you separately about this and
11 get the facts and examine it and so forth to be able
12 to give you a more thorough answer at the moment. I'm
13 not sure we're prepared to answer the question at the
14 moment.

15 FACILITATOR CAMERON: Okay.

16 MS. D'ARRIGO: Okay. Well, it fits into -
17 - it's sort of blurry as to when you've got
18 compatibility whether a state is doing something that
19 is stricter than Federal, less strict than Federal,
20 and I guess I've sat in on IMPEP reviews and they
21 don't always cover the things that I would cover. So
22 I'm not sure how to intersect with that.

23 FACILITATOR CAMERON: I think maybe the
24 description of blurry is probably a good description
25 unfortunately or as the case may be.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Felix and then we'll go to Arjun and,
2 Michael, you have a comment down there, too.

3 MR. RYAN: Yes, sure. When you're ready.

4 FACILITATOR CAMERON: Okay. Then Felix,
5 Arjun and Michael.

6 MR. KILLAR: Okay. I want to go back a
7 little bit to part of the questioning and
8 clarification that Tom and Bill were talking about and
9 that is that when a state's decisions on low-level
10 waste disposal start changing the playing fields for
11 disposal of low-level waste, does that then become a
12 compatibility issue or not?

13 MR. WHITE: It may, but again I don't know
14 the specific circumstances. Again, one of the -- I
15 mean things that I'm not very knowledgeable of. I
16 know it what effects it is, you know, compacts. I
17 mean that is an invasion at the time. You know,
18 agreement states were -- The Congress passed a law. I
19 really don't -- So it's a hard question to answer.

20 MR. KILLAR: Okay. Let me give you two
21 things to think about. In the DOT rates, for
22 instance, interstate transportation of radioactive
23 materials is generally allowed across state borders
24 provided that the regulations are uniformly applied.
25 However, if the state implements some regulations that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are more restrictive such that the transportation ends
2 up having to go around the state rather than trying to
3 abide by that regulation then there is an ability to
4 challenge that regulation as being adverse to
5 interstate commerce and DOT will step in and they'll
6 make a determination of what the intent was for that
7 regulation. Is it not in the spirit of the interstate
8 commerce provisions and is it doing a frivolous thing
9 for the purpose of protecting that state from
10 transportation of radioactive materials through that
11 state?

12 I would think that we're looking at
13 something similar here and the example I like to give
14 is the example from a number of years ago. In the
15 Central States Compact Commission, Nebraska was
16 elected to be the disposal site for the Compact
17 Commission. Nebraska initially indicated that they
18 would accept that opportunity and a number of
19 activities were ongoing and licensing and
20 characterization and licensing of the site as well as
21 a way to be a final site for final license for --
22 There was a change of administration of the state and
23 the governor decided that he didn't want that in his
24 state and as a result of that change in the
25 requirement, what have you, to make it basically stop

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the whole process and stopped the development of that
2 disposal facility in that state.

3 Now what's he done is he actually is going
4 beyond the capability requirements which you
5 authorized him to do. But as a result of that,
6 basically took away a low-level waste disposal
7 facility.

8 FACILITATOR CAMERON: But there's no -- Go
9 ahead, Duncan.

10 MR. WHITE: It sounds like a Compact issue
11 and I know that in the case of Nebraska the other
12 members of the Compact sued Nebraska and they won in
13 court for them to --

14 MR. KILLAR: I agree. They won in court.
15 We got compensation from the State of Nebraska, the
16 developer. The site got compensation for the costs
17 that they expended in the development of the license.
18 But it did not resolve the problem of having a low-
19 level waste disposal facility in the Compact.

20 FACILITATOR CAMERON: But even though NRC
21 has regulations governing low-level waste disposal
22 that doesn't obligate any state including an agreement
23 state to site to license a low-level waste disposal
24 site.

25 MR. KILLAR: At the same time, it doesn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 obligate them to accept it. The way it's written
2 right now it gives them the opportunity to keep it
3 from being in there in the NRC at this point and the
4 way the regulations are written will not prevent that
5 from occurring. So therefore you are impeding
6 interstate commerce.

7 FACILITATOR CAMERON: No. I don't know if
8 the NRC would agree with that particular example.

9 (Off the microphone comments.)

10 Richard, do you want to say something on
11 that?

12 MR. HAYNES: I don't think that that's an
13 NRC issue. That's strictly a Compact issue. The
14 Compact has authority over that, not NRC.

15 (Off the microphone comments.)

16 FACILITATOR CAMERON: All right.

17 MR. YEAGER: Well, no. They're using the
18 Compact system as an out. If the state joins the
19 Compact, then the host state has been chosen to be
20 that host state for that site. No other state can
21 have a site imposed on them. That's the protection
22 they're afforded by being a member of a compact. It
23 has nothing to do with compatibility through the NRC.

24 FACILITATOR CAMERON: That's right. Yes.
25 It's not like the fact that NRC has regulations to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regulate the licensing and operation of a low-level
2 waste disposal site. That doesn't mean that a state
3 is obligated to have the site.

4 MR. KILLAR: The point that I was trying
5 to make is that the state was a host state. It was
6 going through the process, but as a result of a change
7 in administration they changed their policy and
8 therefore imposed such requirements that it was not
9 practical for that site to be the site.

10 Now they paid for it dearly. Yes. But it
11 did not resolve in having a disposal facility. So it
12 did impede interstate commerce from that perspective.

13 FACILITATOR CAMERON: I see where you're
14 going with it. Strict regulations.

15 Arjun?

16 MR. MAKHIJANI: I have some concerns in
17 this specific context about site-specific performance
18 and what are the NRC's oversight responsibilities and
19 whether it has been fulfilling them. In the specific
20 instance of DU, my institute so far as I know is the
21 only that has done an independent analysis of the two
22 specific sites at which DU has proposed to be
23 disposed, the one in Texas and the one in Utah.

24 And in both cases now this is a site-
25 specific analysis, not generic, not what was done in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the SECY paper. Use the standard model. We
2 presented it as expert testimony. We found in all
3 scenarios in a number of different cases, humid, dry,
4 whatever, that the Subpart C limits were violated by
5 orders of magnitude. I mean you're not talking a
6 factor of two. You're talking orders of magnitude,
7 rem or hundreds of rem dose. In most cases, the dose
8 limits were violated around 10,000 years give or take
9 a few thousand years.

10 We also showed that in one case the
11 license application document contained absurd numbers,
12 more uranium than was ever mined to be disposed of at
13 the site, and in the other case also contained even
14 more absurd numbers, more uranium than the weight of
15 the earth proposed to be disposed of per gram of soil.

16 FACILITATOR CAMERON: And in Part --

17 MR. MAKHIJANI: Let me come to the
18 question.

19 FACILITATOR CAMERON: Arjun, you can use -
20 - It's okay to talk about specific sites as examples
21 for things that are relevant to this rulemaking, but I
22 think that it gets a little bit uncomfortable when we
23 move into the area about allegations about a
24 particular site.

25 MR. MAKHIJANI: This is not an allegation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is -- What I'm about to say is the NRC has these
2 documents. We're happy to supply them to everyone. I
3 just offered them to Dr. Burns. You know, if there is
4 a mistake we will publish a correction. These are not
5 allegations. They're scientific facts. 10⁷
6 picocuries per gram has a certain amount of weight.
7 If it's in your paper, that means something and you
8 can translate it into a bunch of kilograms. That's
9 not an allegation. That's simply a fact.

10 FACILITATOR CAMERON: I'm not saying that
11 it's not true. I'm not saying that it's not false.
12 I'm just saying that if there is a generic issue for
13 this --

14 MR. MAKHIJANI: Yes, there is a generic
15 issue.

16 FACILITATOR CAMERON: Then let's get to
17 the generic issue.

18 MR. MAKHIJANI: But it requires a little
19 preface because it has some history. The specific
20 question is all of these facts are known and have been
21 repeatedly been pointed out in various ways to the
22 NRC. I've also explicitly said -- This is not an
23 issue about the sites. It's an issue about NRC
24 oversight and whether the NRC is actually fulfilling
25 its responsibilities and that the Agreement States

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happen to sanction things that are unscientific and
2 technically unsupported whether the NRC actually does
3 anything, whether its IG does anything, whether its
4 Commissioners take any action and we have not seen any
5 action for four years despite personally bringing this
6 up with NRC Commissioners, despite presenting it in
7 expert testimony, with the result that even though the
8 only independent calculations that were not challenged
9 by either LES or the NRC or the State of Utah showed
10 that the dose limits would be greatly violated. This
11 proceeding is now looking at shallow land burial as if
12 arid disposal would be okay without ever having
13 properly reviewed the site-specific analysis that were
14 presented and available to the NRC.

15 I consider this a pretty gross failure of
16 NRC oversight and I would like to know what is the
17 assurance that we have that the NRC's actually going
18 to exercise some oversight over the actual site-
19 specific analyses that are done because I feel in the
20 present instance in both cases it has not done so.
21 I'd like to know what is the process by which the NRC
22 is actually going to regulate Agreement States in
23 these documents that are produce because in the past
24 it has not done it.

25 FACILITATOR CAMERON: To bring Arjun's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concern into this rulemaking, compatibility level is
2 set for the site-specific performance assessment and
3 it could be a wide range. It could be whatever. How
4 is a member of the public going to be assured that of
5 the NRC oversight of what the state is doing, at
6 least, in terms of those areas where there may not be
7 flexibility for the state to ask? I think that's the
8 question and, Duncan, it's an Agreement State
9 question, oversight of Agreement States. Can you
10 speak to anything there?

11 MR. WHITE: I guess in the current
12 regulatory regime we have a dose limit that they
13 require to meet for a waste disposal facility and
14 again, as I said, that's the same for everybody.
15 Compatibility A. Again, the state has to demonstrate
16 -- the licensing authority has to demonstrate that the
17 site operator is meeting that and they will use, I
18 guess, appropriate models, appropriate performance
19 assessment tools, to show that. Again, they have some
20 flexibility in how they do that.

21 Will they do the same stuff as the NRC? I
22 don't know that. I mean maybe some of the other
23 technical people could answer that question. That's
24 certainly the case. What we would review for the
25 Agreement State is that they have their own internal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 procedures and protocols and we would see are they
2 following them and are they appropriate.

3 FACILITATOR CAMERON: You had told Tom
4 beginning of this conversation that if a licensee had
5 a problem with what the agreement state was doing vis-
6 à-vis compatibility, they could bring that to the
7 attention of the NRC. In this case if a member of the
8 public had a concern about what an Agreement State was
9 doing or not doing, is the remedy to contact the NRC
10 Agreement State Program to inquire about this?

11 MR. WHITE: I mean again they are the
12 licensing authority. They would be best equipped to
13 answer that question.

14 MR. ESH: So I think the question is when
15 you do an audit of one of these reviews by the
16 Agreement State, do we in any instance do the review
17 in order to do the audit of the review is your
18 question. You could review the process. That's one
19 way to do the audit or you could do an independent
20 review or assessment or essentially do the review
21 yourself in order to do the audit of the review that
22 the Agreement State did.

23 That's the question that you're asking.
24 To what detail do you need to do that? Do we in this
25 Agreement State what do we need to do to ensure that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the compatibility requirements are being met? Right?

2 MR. MAKHIJANI: No, Dr. Esh. Actually, it
3 is a much lower bar. In this particular case, the
4 items in question, the material in question, was not
5 just introduced as a member of the public and it
6 wasn't introduced to the Agreement States. It was
7 introduced in the context of a license that the NRC
8 was considering granting and in which the disposal of
9 DU from enrichment plants was a very material and
10 central issue.

11 And the NRC staff lawyer asserted that the
12 reported question that contained the numbers that I've
13 just cited was scientifically sound. And I testified
14 that it contained this information that said it would
15 dispose of more uranium than the weight of the earth.

16 I also pointed this out to an NRC Commissioner and
17 the entire thing was ignored.

18 My testimony was never rebutted. It was
19 never said that I was wrong. And if I am wrong I will
20 publish a correction. My website has errata on the
21 home page. But even though it was formally presented
22 four years ago, this problem has neither been
23 corrected by the State of Utah and I have presented
24 this to the State of Utah as well nor has it been
25 corrected by the NRC nor am I aware that even a pencil

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has been lifted to try to correct it nor have I ever
2 received a phone call to say what was my problem.

3 FACILITATOR CAMERON: Okay. Arjun, all I
4 can suggest to you is that just because an issue is
5 raised in a licensing processing doesn't mean that
6 it's going to get into the channel of the NRC that is
7 going to review the issue in terms of the Agreement
8 State Program and you can raise that issue with the
9 Agreement State Program. You can sit in on the public
10 meeting IMPEP review of the particular state. Those
11 issues can be raised. I don't know how they're going
12 to be resolved, but those issues can be raised.

13 And I want to close this off by going to
14 Mike and then Tom, hear quickly from Diane and go to
15 the audience.

16 Michael.

17 MR. RYAN: (Inaudible).

18 FACILITATOR CAMERON: Use the mike.

19 MR. RYAN: There we go. I apologize,
20 Charles. In thinking about the Agreement States, a
21 couple of facts strike me. There's something like
22 17,000 Agreement State licensees and something like --
23 is it 9,000 or 7,000 NRC licensees?

24 MR. WHITE: It's going closer to 3,000 NRC
25 licensees now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RYAN: Three thousand.

2 MR. WHITE: And 19,000 Agreement States.

3 MR. RYAN: Okay. So it's a big difference
4 between NRC licensees and Agreement States. My point
5 is the actions in the Agreement States. So part of
6 the audience for your work products and all the things
7 we've talked about over the two days of guidance and
8 what ought to be in that and all of that is really
9 aimed at Agreement States.

10 So I would put on your thinking cap and
11 try and think about how you can engage them at this
12 earlier stage of planning and what they might like to
13 see or get in some way. Maybe it's to go to the
14 Conference of Radiation Control Program Directors or
15 other resources like that to get their input and maybe
16 having a workshop like this with them and make sure
17 that you feel comfortable that you have alignment with
18 what their needs might be if when they should or are
19 dealing with low-level waste issues.

20 I think if you do that early in the
21 process and come up with products that reflect that
22 input the likelihood of being aligned with the review
23 process through the IMPEP program in the Agreement
24 States is a lot higher. So that's my suggestion is to
25 take that very large body of licensees who might be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the ultimate users of a disposal site in an Agreement
2 State and have an Agreement State license themselves
3 and get that constituency's input at an early stage in
4 your process now.

5 Thank you.

6 FACILITATOR CAMERON: Okay. Thanks, Mike,
7 and obviously during this initial stage we're trying
8 to get Agreement State input from their presence at
9 the table.

10 MR. RYAN: Again, I should have
11 immediately added and, of course, with the South
12 Carolina representatives that's one important
13 Agreement State that has a long history on this issue.

14 But there are 34 others now or 33 plus one soon to be
15 added. Thirty-six, okay.

16 FACILITATOR CAMERON: And Larry wants to
17 say something about this, but I can tell you just from
18 doing the convening for the workshop that the
19 Organization of Agreement States and CRCPD know about
20 the workshop and the issues and Mark actually
21 referenced that when he did his introduction.

22 Larry.

23 MR. CAMPER: Mike, I want to make sure a
24 question for clarification, a comment and
25 clarification. When we were developing the SECY, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 did confer with the Agreement States of Texas, South
2 Carolina, Washington, Utah and shared with them the
3 options we were considering and where we were heading
4 toward in what was ultimately Option No. 2. There was
5 a strong and uniform alignment behind that amongst
6 those Agreement States. They favored the idea of
7 imposing a performance assessment for a number of
8 different reasons.

9 But having said that I think I hear you
10 saying "Well, go talk to all the Agreement States"
11 because they have the users of this material or
12 generators of this material and try to gain a greater
13 insight from the Agreement State perspective.

14 MR. RYAN: I think that's one aspect of
15 it. The other is keep going with what you started on
16 the SECY process on the technical process. David is
17 developing technical tools. So if the Agreement
18 States are familiar with them, have had input into
19 them, and you've adjusted based on that input whether
20 they're currently a sited state or whether they
21 eventually become a sited state, they'll be more
22 familiar with the tools and techniques that they're
23 going to use to get a license and then ultimately the
24 Agreement State Program will be evaluated against. Do
25 you follow me?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CAMPER: I do, and I think that's why
2 I asked the question. Because if we looked at the
3 probability of additional states becoming hosts for
4 low-level waste disposal sites I mean we don't see
5 much potential out there.

6 MR. RYAN: Well, if I told you 25 years
7 ago there were going to be so many sited states and
8 low-level waste compacts and three sites left, you
9 probably would have said, "I don't think that." I'm
10 just saying if we lay the groundwork and the technical
11 work products to get input from the Agreement States
12 now they're going to be a lot better later on.

13 FACILITATOR CAMERON: Okay. Thank you.
14 We're going to go to Tom, Diane, check in with the
15 audience. Go to the next short subject.

16 MR. DORNSIFE: While you're going through,
17 can I just have one very quick one?

18 FACILITATOR CAMERON: Sure, but let's go
19 to Tom and Diane first.

20 MR. DORNSIFE: All right.

21 FACILITATOR CAMERON: Tom.

22 MR. MAGETTE: I just want to correct what
23 I think is pretty serious misrepresentation since
24 we're keeping a record here. The notion that there
25 have been two independent and therefore more accurate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 assessments of the disposal of the depleted uranium at
2 the Clive site and the WCS site that they've somehow
3 been overlooked or ignored is not true. The
4 conclusions and the expert testimony were, in fact,
5 part of a proceeding and they were rejected by the
6 Atomic Safety and Licensing Board in that hearing.

7 That decision was appealed to the
8 Commission and the Commission ratified the conclusion
9 of the Atomic Safety and Licensing Board which
10 included technical experts and also rejected those
11 conclusions. So this notion that there's some
12 extraordinarily valid work floating around out there
13 that's been ignored is simply not the case.

14 FACILITATOR CAMERON: Okay. Thank you.

15 Diane.

16 MS. D'ARRIGO: There is not a disposition
17 pathway now for depleted uranium and in the proceeding
18 for the LES facility we're making the case that
19 there's not a place for that waste to go and that
20 didn't stop the licensing. So there will be a lot
21 more depleted uranium to be dealt with and now we are
22 trying to increase allowed doses or change regulations
23 or find a place to put this stuff and we're talking
24 about a lot more of it than we already have to deal
25 with.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I just think we have to have that
2 perspective on it that the industry does not deserve a
3 blank check to continue to generate waste for which
4 there's no disposal and tweaking regulations here and
5 there and millirems and rems and different criteria in
6 the performance assessments is a fine technical
7 exercise. But the reality is it's probably going to
8 leak wherever it goes. So we're deciding how much is
9 okay to leak and that's a real frustrating perspective
10 when we have a world that has a lot of pollutants that
11 are in there and we're not even beginning to look at
12 the larger picture of the possibility of maybe going
13 forth without producing more known poisons, known
14 toxins, known carcinogens.

15 That at least needs to be considered and
16 it doesn't seem to be able to be considered in any of
17 these frameworks. We're always looking at where we
18 can allow more allowable contamination, higher levels,
19 itty-bitty little levels but more and more everywhere
20 and I'm just representing the perspective that a lot
21 of people don't want more at all.

22 FACILITATOR CAMERON: Okay. I think
23 people understand that perspective.

24 MS. D'ARRIGO: Yes. That's why I'm here.

25 FACILITATOR CAMERON: And obviously some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people would think that site-specific performance
2 assessment is going to help in terms of preventing
3 release from these sites. Certainly the long-term
4 rulemaking that Larry is going to talk about very
5 shortly will go to that.

6 Bill.

7 MR. DORNSIFE: I guess I, unfortunately,
8 started this discussion with I thought was a simple
9 question. Let me rephrase that question to make --
10 Hopefully, I can get a simple answer. Obviously, when
11 NRC regulates reactors, they are not going to
12 implement their regulations in any way that would
13 create an unfair competitive advantage between one
14 reactor or another.

15 Does NRC feel they have any obligation
16 either under Atomic Energy Act authority or any other
17 Federal authority that if indeed implementation of
18 their regulations even through an Agreement State
19 Program is creating an unfair advantage that they have
20 any obligation to correct that?

21 FACILITATOR CAMERON: Duncan, do you have
22 an answer to that? I mean, you've talked about the
23 fact that the NRC in setting compatibility levels
24 looks at perhaps interference with interstate commerce
25 and things like that but that may be --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CAMPER: The Nuclear Regulatory
2 Commission's regulations are designed to protect
3 public health and safety. One of the criteria that we
4 do not consider when reviewing an application for
5 license is whether it does or does not provide an
6 unfair or fair competitive advantage. Simple.

7 FACILITATOR CAMERON: Okay. Thank you.

8 And, Arjun, I just have to ask you not to
9 -- I mean you had a statement. Tom responded and I
10 just have to stop it on this point. So did you have -
11 -

12 MR. MAKHIJANI: A sixty second factual
13 matter.

14 FACILITATOR CAMERON: Go ahead.

15 MR. MAKHIJANI: As a factual matter, there
16 was no rebuttal of our technical work that was ever
17 given either by LES or NRC or NRC staff.

18 As a second point, the license was not
19 based on the rejection of our work or even based on
20 disposal of DU or WCS or Clive, Utah. Ultimately the
21 Commission took refuge in the law that said DOE has to
22 accept DU and the DU estimate of disposal cost would
23 be accepted and that was the end of it. We were not
24 even given an appropriate opportunity to examine all
25 of the details of that. That's how the license was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 granted.

2 FACILITATOR CAMERON: Okay. I would just
3 commend people to read the licensing board and the
4 Commission decision on this case and arrive at their
5 own conclusions on it.

6 Does anybody have anything in the audience
7 on Agreement State issues? Yes, sir. And please
8 introduce yourself to us.

9 MR. JAMES: My name is David James. I'm
10 with DW James Consulting. I do some consulting work
11 for EPRI.

12 I just want to make a point. This goes
13 back to the Atomic Energy Commission, but I think it
14 was in 1972 or '73 the State of Minnesota applied
15 higher discharge/low discharge limits than what the
16 NRC licensed and the NRC took issue with it and went
17 to the Supreme Court I believe and the State of
18 Minnesota won the case. So the reality is that any
19 time the state wants to apply higher limits they
20 probably can. That's the main thing.

21 The other thing was every atom of U₂₃₈ that
22 is being disposed here has always been on this earth.

23 FACILITATOR CAMERON: Has always been
24 what?

25 MR. JAMES: Has always been on this earth.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: Okay. Thank you.

2 Okay. Larry, long-term rulemaking, waste
3 classification.

4 MR. CAMPER: Thank you, Chip.

5 Yesterday during my opening comments I
6 pointed out that this is a two-step process. What
7 I'll talk about now is the second step which we refer
8 to as "The Long-term Rulemaking on Waste
9 Classification."

10 The second part of this rulemaking effort
11 as I said is what we're calling a longer-term
12 rulemaking. The text from the SRM says specifically
13 the Commission directed the staff to propose the
14 necessary resources for a comprehensive revision to
15 risk inform the 10 CFR 61 Waste Classification
16 Framework with conforming changes to the regulations
17 as needed using updated assumptions and referencing
18 the latest International Committee on Radiation
19 Protection Methodology (ICRP). As part of this
20 effort, staff will identify any corollary or
21 conforming legislative changes necessary to support
22 this rulemaking, if any, as well as recommendations on
23 how to proceed absent such legislation being enacted
24 and other agencies that may be impacted by any
25 changes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This effort should explicitly address the
2 waste classification of depleted uranium. In
3 addition, this effort should include the performance
4 of a technical analysis for public comment concerning
5 the disposal in a near surface facility for any long-
6 lived radionuclides, including uranium. This analysis
7 and the resulting comments should inform the staff's
8 eventual recommendation to the Commission on an
9 appropriate generic requirement addressing such
10 disposals.

11 This revision would likely involve
12 different, updated methodologies and assumptions in
13 the Part 61 methodology for key variables such as
14 disposal configurations, performance periods,
15 institutional control periods, waste forms, site
16 conditions, exposure pathways and receptor scenarios.
17 This effort would explicitly address the waste
18 classification for depleted uranium as I mentioned and
19 it would reflect current knowledge of the performance
20 of low-level waste disposal facilities and would
21 present risk-informed concentration limitations for
22 all radionuclides, not just selectively for depleted
23 uranium. This revision would accurately represent our
24 increased understanding today rather than relying on
25 the Part 61 analysis conducted approximately 30 years

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ago.

2 An update of the methodology used to
3 develop the concentration limits could result in
4 higher or lower concentration limits than currently
5 used which could actually increase or decrease
6 disposal options for some types of waste. For
7 example, current Class B/C waste could become Class A
8 waste perhaps.

9 As part of the staff's evaluation, we
10 would consider the International Waste Classification
11 System as well and see if it is applicable to our low-
12 level waste environment here. Internationally, they
13 have a different classification scheme with six
14 classes of waste as depicted on the slide.
15 Internationally, countries have stressed the role for
16 site-specific performance assessment. The IAEA
17 published a Safety Guide No. 111-G-1.1 that is about
18 to be updated for the 1994 edition.

19 The updated version distinguishes between
20 LLW and Intermediate Level Waste (ILW) for long-lived
21 alpha emitters like U_{238} . The guide says that
22 "national authorities should establish limitations fo
23 the disposal of long-lived radionuclides for near-
24 surface disposal based on safety assessment of a site-
25 specific disposal facility." The guide also states

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that "a very definitive boundary between ILW
2 (Intermediate Level Waste) and LLW cannot be provided.
3 Waste acceptance criteria for a particular facility
4 will be dependent upon the actual design of and
5 planning for a near-surface disposal facility, for
6 example, engineered barriers, duration of
7 institutional controls, site-specific factors and so
8 forth."

9 It is important to note that overseas most
10 countries have not disposed of significant quantities
11 of DU. According to a 2001 NEA report, "Management of
12 Depleted Uranium," all of the major nuclear fuel
13 producing countries are storing depleted uranium with
14 expectations that an eventual use will be found for
15 it. In the U.S., NRC's policy is that the generator
16 can determine if there is a use for their depleted
17 uranium or when in fact it becomes waste.

18 As we proceed into this longer-term
19 rulemaking and I mentioned yesterday that it's
20 currently in budgeting place planned for FY 2011 to
21 start it, FY 2011, we would certainly plan to have
22 additional workshops to collect your input throughout
23 the course of that particular rulemaking and hold a
24 number of technical and legally oriented workshops to
25 consider all the various viewpoints.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Because of the scope of this long-term
2 rulemaking is large, there would certainly be
3 significant opportunities for public comment. I do
4 think it is fair to say that when we move into this
5 longer term rulemaking to risk inform the waste
6 classification scheme of Part 61 that that would
7 generate a tremendous amount of interest and I would
8 envision, for example, that that rulemaking would
9 probably take minimally three to four years.

10 I think I'll stop right there and see if
11 you have any questions or discussion.

12 FACILITATOR CAMERON: Okay. Thanks,
13 Larry. I would just note that from the parking lot
14 that yesterday morning Arjun raised the issues that
15 all options should be considered in this rulemaking
16 including the change in waste classifications. And,
17 Arjun, am I representing that correctly what you said?

18 MR. MAKHIJANI: Well, yes. If you're
19 going to have a risk-informed rule. I'm not endorsing
20 that we should revisit this regulation, but since the
21 NRC has decided to revisit it I think we should
22 revisit it fully. And just to clarify since the
23 question has come up, I will simply say that we are
24 now investigating the whole framework of all
25 environmental health protection and it's our view at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Institute that so far all this regulation takes
2 the point of view of the polluter because it follows a
3 single pollutant and does not take the point of view
4 of the public which receives all pollutants or a
5 number of pollutants at the same time and therefore is
6 not concerned with health protection.

7 I would ask that any risk-informed process
8 take the point -- I recognize that we need to follow
9 pollutants in order to regulate them, but that doesn't
10 mean that we can ignore the public just because we
11 can't understand synergies, for example, and that any
12 new process especially as it will set a precedent for
13 lots of other processes consider the point of view of
14 the public, specifically, that they are exposed to
15 chemicals and radiation at the same time.

16 And we will be publishing a report on
17 synergisms in the coming months and I would be happy
18 to send it to you. I've already mentioned it to
19 people in the NRC and the EPA.

20 FACILITATOR CAMERON: Thank you, Arjun,
21 and I think it would also be useful to send it to Dan
22 at the EPA.

23 MR. MAKHIJANI: We are in communication
24 with the Office of Radiation and Indoor Air about this
25 and I've already committed to send it to them. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 report is not yet complete and has not yet been
2 reviewed. So in the coming months when it's done, we
3 will send it.

4 FACILITATOR CAMERON: Okay.

5 Questions? Comments on the long-term
6 classification? Bill.

7 MR. DORNSIFE: I guess I'm troubled if the
8 decision on whether this material is suitable for
9 shallow land disposal is going to be made after a
10 decision on what to do. In terms of disposing it as
11 shallow land burial, what happens if we determine it's
12 not suitable for shallow land burial after we've
13 disposed of it?

14 MR. CAMPER: Well, Bill, the material that
15 we're talking about, of course, now near-surface
16 disposal I mean as I mentioned yesterday and I had a
17 graphic that showed that and I don't know if Patty
18 will use that slide -- no, I guess you're not -- but I
19 had a graphic yesterday that pointed out under the
20 long-term rulemaking DU that gets disposed of between
21 now and then will need to be specifically addressed in
22 the long-term rulemaking.

23 Now what will that say? I don't want sit
24 here and try to prophesize. What I do know is that
25 it's not uncommon at all when rules are created that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 things are not retroactively addressed. They're
2 grandfathered if you will. That is a possible outcome
3 of this. No one has said directly or implied that
4 there would be a requirement to go and dig this
5 depleted uranium up. I didn't say that yesterday and
6 we're not suggesting that now. What I am saying is
7 that the long-term rulemaking clearly in the
8 statements of consideration would need to specifically
9 address that DU which has been disposed.

10 FACILITATOR CAMERON: And is it possible
11 that one result could be, one option is, that the
12 site-specific performance requirement would take care
13 of the issue?

14 MR. CAMPER: That's a -- Yes, I was going
15 to say that next. I think that's a very good point.
16 I think what you have to bear in mind when you ponder
17 this question is that whether it be depleted uranium
18 which has been disposed of today presumably has been
19 disposed of safely. There has been a performance
20 assessment conducted. Depleted uranium which would be
21 disposed of between now and then, we yesterday pointed
22 out, for example, that we think it would be prudent to
23 reexamine performance assessments.

24 I mean the material that would be disposed
25 of between now and the time this revision of Part 61

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would occur would presumably have been disposed of
2 safely in a manner that protects public health and
3 safety.

4 FACILITATOR CAMERON: Let's go to Tom and
5 then to Christine and then we'll go across the way.

6 MR. MAGETTE: I have a question, Larry.

7 MR. CAMPER: Sure.

8 MR. MAGETTE: You made reference to DU
9 disposed of between now and then. What about DU
10 disposed of prior to now? I mean if you start looking
11 at what's already in a site it's not just the
12 currently operating sites that might be in that
13 dataset, Maxie Flatts, Beatty, West Valley, Sheffield.
14 Are you going to require something of them possibly?

15 MR. CAMPER: Again, I want to sit here and
16 preordain what the final rule would say about
17 previously disposed of material. What I do know as I
18 said before is it's no uncommon that this type of
19 activity is grandfathered under the assumption and
20 verification that it was, in fact, disposed of safely
21 previously.

22 But clearly the long-term rulemaking would
23 need to address this particular question straight on
24 in the statements of consideration. I just don't want
25 to prophesize as to what I would say.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: Christine.

2 MS. GELLES: I would offer once again that
3 perhaps the Department of Energy has some experience
4 on these sorts of matters. I'm thinking of the change
5 in the definition of transuranic waste and given that
6 this rulemaking would be a risk-informed rulemaking I
7 think one way in which it could address not just
8 previously disposed of DU between today and five or
9 six years from now or any DU or any waste stream where
10 it's impacted by a revised classification scheme would
11 factor in the risk associated with exhuming previously
12 disposed of wastes. So again we have that experience
13 in terms of dealing with pre-1970 transuranic waste if
14 such a waste classification actually exists. We look
15 forward to being in dialogue with you on that as well.

16 FACILITATOR CAMERON: Thank you.

17 Do you have anything on that?

18 MR. CAMPER: When you have any more
19 questions, I have one more final comment I wanted to
20 make whenever you're ready.

21 FACILITATOR CAMERON: Diane.

22 MS. D'ARRIGO: You probably know, but we
23 will continue to oppose exempting radioactive waste
24 and declaring very low-level waste not radioactive
25 enough to regulate. Just a reminder.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 FACILITATOR CAMERON: Okay. And Felix.

2 MR. KILLAR: So on the other side of the
3 coin we assume that as you go forward and start
4 looking at this material as previously been disposed
5 you'll take into consideration backfit provisions for
6 the material that came from a Part 50 site and a Part
7 70 site and a Part 76 site. I realize Parts 30 and 40
8 right now do not have backfit provisions, but they are
9 moving in that direction. So I think you need to
10 think about the impact and include that in your
11 analysis.

12 MR. CAMPER: You are absolutely right.
13 Backfit types of considerations go into reaching a
14 position as to what has been disposed of previously.
15 I mean, you're right.

16 FACILITATOR CAMERON: And, Bill, and we're
17 going to take a break after this.

18 MR. DORNSIFE: I guess I didn't catch
19 that, but in this extended rulemaking are you
20 considering the issue of very low-level waste and
21 alternate disposal?

22 MR. CAMPER: In this particular
23 rulemaking?

24 MR. DORNSIFE: Yes.

25 MR. CAMPER: That's a very interesting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question as I said a moment ago. I mean the
2 Commission gave us a particular direction at this
3 moment in time to budget for risk informing the waste
4 classification scheme. That was the direction. We
5 assumed as we said yesterday that to budget for it is
6 to proceed unless the Commission would direct us
7 somewhere along the line not to proceed.

8 I think what's interesting is when you
9 start to examine Part 61 with the idea of risk
10 informing the waste classification scheme it's going
11 to raise a litany of questions not unlike the ones
12 that you're alluding to here, Bill. I think, I've
13 always thought, that once you went into Part 61 unless
14 you had a very specific narrow focus in the rulemaking
15 like this limited rulemaking is, but once you go
16 beyond that and I think once you start to open up Part
17 61, it will raise a lot of questions.

18 And I think, therefore, for a myriad of
19 reasons, some of which are purely economic, some of
20 which are public concerns, various stakeholders'
21 views, it will become I believe in my personal view a
22 very complicated regulation that will open up a lot of
23 questions. And maybe that's not a bad thing. I mean
24 maybe that's the way it should be. But we shall see.

25 And, of course, what we'll try to do as we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proceed down this path and we begin to see those kinds
2 of issues emerging we'll make it a point to
3 communicate with the Commission on a regular basis to
4 make sure they understand how this is starting to
5 shape up and what the implications are and what would
6 you like for the staff to do about it.

7 MR. DORNSIFE: Just another question
8 quickly.

9 MR. CAMPER: Yes.

10 MR. DORNSIFE: In the international
11 community, how do they typically deal with these waste
12 streams that are lower than low level?

13 MR. CAMPER: In the international
14 classification process, there is an exemption. There
15 is a clearance level if you will.

16 MR. DORNSIFE: Right.

17 MR. CAMPER: An exemption. That's
18 actually one of the categories, exempt waste. We
19 don't have exempt waste as a waste category. What
20 Diane was referring to I think is the fact that under
21 our 20.2002 process which is a pathway in Part 20 that
22 says you may seek approval to dispose waste by some
23 means not otherwise authorized in the regulations.
24 Very low levels of waste with very minimal dose limits
25 typically on the order of a few millirem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DORNSIFE: You have obviously --

2 FACILITATOR CAMERON: Bill, you have to
3 talk into the mike.

4 MR. DORNSIFE: Some concentrations.

5 MR. CAMPER: We do.

6 FACILITATOR CAMERON: You need to talk
7 into the mike.

8 MR. DORNSIFE: You have exempt
9 concentrations.

10 MR. CAMPER: Yes, we do.

11 MR. DORNSIFE: That are then related to
12 waste.

13 MR. CAMPER: That is true. We do. But in
14 the case she was referring to we do grant exemptions
15 of certain cases when the 20.2002 process is followed.
16 I think that's what she was referring to.

17 FACILITATOR CAMERON: Okay. Christine.

18 MS. GELLES: I think this is a quick
19 question, Larry. I agree with you that as you start
20 to look at Part 61 it opens up a lot of issues ranging
21 from the very low activity waste as well as up to
22 where does it end. Does it end at intermediate level
23 waste or does it start to creep into Part 60?

24 MR. CAMPER: Well, again, a great
25 question. At the moment what the Commission has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 directed us to do is to proceed with a rulemaking that
2 would risk inform the waste classification scheme and
3 I read you the specific directions to the staff. That
4 is the charge to the staff at the moment.

5 Now what will happen is as a practical
6 matter once you head into that particular rulemaking
7 we're going to start to have workshops, have public
8 discussions and the very kinds of questions that
9 you're raising and that Bill is raising will be
10 raised. And I suspect what will happen as a practical
11 matter is the staff will be communicating with the
12 Commission along the way and we will making some
13 adjustments or seeking permission to make certain
14 adjustments in the assignment and it will be a
15 dynamic.

16 But at the moment the SRM says to do what
17 I said to do awhile ago. But might that change along
18 the way? I suspect that's certainly possible.

19 FACILITATOR CAMERON: And Arjun.

20 MR. MAKHIJANI: Just a couple of things
21 quickly. In one case in Idaho, the DOE is actually
22 exhuming some varied transuranic waste currently in
23 Pit 9 I think if I'm not mistaken.

24 The second thing is to the best of my
25 understanding in the European or some of the European,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 British and French I think, the intermediate level
2 waste which is required to be disposed of at non
3 service and deep disposal some of our Class B would
4 fall into that category and certainly Class C waste,
5 long-lived Class B and Class C waste.

6 And in the final comment and then followed
7 by a question is the current regulations, many of
8 them, 25 millirem per year if you take it as whole
9 body does not correspond to our risk level of 10^{-4} to
10 10^{-6} over a life time. In fact, it's considerably
11 more than that as you know and if we're going to go to
12 something risk informed, we would expect that the
13 lifetime cancer incidence risk would stay within what
14 the government has been telling the public but not
15 actually implementing. My question is do you have a
16 range of lifetime cancer risk that you are targeting
17 that you can tell the public.

18 MR. CAMPER: Our current dose-based
19 approach is different than the risk-assigned approach
20 that the EPA uses in the 10^{-4} to 10^{-6} that you're
21 referring to. They use a different approach.

22 Now I think for the moment the best I
23 could answer your question would be as we look at a
24 risk-informed examination of the waste classification
25 scheme the mindset that we go into that particular

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rulemaking undertaking and I just gave one example
2 here of looking at the international approach is we
3 have to go into a risk-informed revision of Part 61
4 Waste Classification Scheme with an open mind. I
5 think we have to explore all those kinds of options
6 and form views and communicate with the Commission
7 along the way as to how it would like to go.

8 Otherwise, I think we would be sort of
9 preordaining or prejudging the outcome. I think the
10 staff will be looking at all possible options.

11 FACILITATOR CAMERON: Okay. Thanks.
12 We're going to go to the audience now. But just for
13 information, the SRM you mentioned was SRM SECY-08-
14 0147 and it is on the website that was posted for
15 this.

16 Any questions on here on long-term
17 classification rulemaking? Anybody?

18 (No verbal response.)

19 Okay. We don't have a whole lot left to
20 do, but why don't we take a break for 15 minutes and
21 then we'll come back and we'll try to finish up with
22 alacrity. Off the record.

23 (Whereupon, a short recess was taken.)

24 FACILITATOR CAMERON: On the record.
25 Okay. We're going -- I don't know if we're going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 close out fairly quickly. We have some issues to
2 discuss. But we had this topic, Other Considerations,
3 on the table and the three issues that were going to
4 be discussed there have already been discussed. One
5 was the thing we started off with this morning on what
6 happens in the interim and we got lots of input on
7 that.

8 The second issue was what do you do with
9 the existing inventory at a site where there's a
10 proposal to dispose of more DU and I think that was
11 covered in terms of source terms a lot of other times
12 during the meeting where you have to consider that in
13 your performance assessment.

14 The third one was something that we
15 originally weren't going to which was the Maxie Flatts
16 situation which is sites that are not anticipating to
17 have DU there. What's the impact of this particular
18 rule? Tom asked that question and I believe we had an
19 answer for it. I don't know if it was a satisfactory
20 answer or not, but basically we've done all the other
21 considerations. Although if anybody wants to speak
22 some more on those, we can do that.

23 But, if not, I was just going to go to
24 some parking lot issues to make sure we covered them
25 and then ask for any final comments around the table

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and have Larry close the meeting for us. Arjun, I was
2 just saying that I think our other considerations have
3 been handled. What happens in the interim before this
4 rule is final? We talked about that and other issues.

5 MR. MAKHIJANI: Just one minor point. I
6 have the French regulation.

7 FACILITATOR CAMERON: Oh good.

8 MR. MAKHIJANI: I will give a copy to Dr.
9 Esh and do an informal translation for him. But I
10 have a few other copies for whoever might want it.

11 FACILITATOR CAMERON: Thank you, Arjun.
12 And please see Arjun on that.

13 And Patty.

14 MS. BUBAR: I just wanted to clarify. We
15 did put this agenda item on the agenda, Other
16 Considerations, anticipating that we would want to
17 have some discussion on all these topics that Chip
18 just reviewed and we didn't see them fitting so nicely
19 into the items that we had put on the agenda, the
20 technical items based on the questions or the items
21 that were in the *Federal Register* notice.

22 For consistency purposes, we've got the
23 same agenda proposed for Salt Lake City. So we'll
24 keep this Other Considerations on the agenda for Salt
25 Lake City, but I think it was good the way it happened

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at this workshop where these items really got
2 discussed when it was appropriate based on what the
3 members of the roundtable wanted to talk about or when
4 they wanted to talk about it.

5 But for Salt Lake City we will keep the
6 agenda as it is and it may end up being just like this
7 where we address those items throughout the two days
8 and then don't really have any other considerations.
9 It will be our time for getting to the parking lot
10 issues.

11 FACILITATOR CAMERON: Okay. Thank you,
12 Patty, for explaining that. Christine.

13 MS. GELLES: Thank you. Patty, the one
14 thing I just wanted to ask was a clarifying question
15 in terms of the NRC's expectations. I mean I know I
16 heard Larry talk about or maybe it was Dave talk about
17 mining the transcript to get the input. But I also
18 heard a request for some written information and I
19 just wanted to be clear about your expectations
20 because the Department of Energy will evaluate whether
21 or not we'll provide some written input, but we do not
22 intend it to be a line-by-line response to the
23 questions that were in the *Federal Register* because we
24 felt the flow of the discussion here in the meeting
25 according to the agenda was at the appropriate level

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to get at the core issues rather than those more
2 detailed questions that were in the *Federal Register*.

3 I just wanted to be up front about our considerations
4 and potential plans and get your reaction to that if
5 you wanted to offer one.

6 MS. BUBAR: Okay. Thank you.

7 MR. ESH: Yes, that's helpful. If people
8 want to submit written information, we will certainly
9 take it and we will use it. Basically, we'll use
10 whatever information we have available whether it's
11 the transcript, whether it's our meeting notes,
12 whether it's written information. And certainly if
13 you want to submit something in writing to us you
14 don't have to address all the questions. You can
15 address whatever the issue is you want to including
16 your own issues that were maybe not on the agenda. So
17 you're free. You have a lot of flexibility here.
18 We'll just the information the best we can.

19 FACILITATOR CAMERON: And for the comment
20 period, it closes when? October 30th. We will be
21 having the meeting in Utah September 23rd and 24th.
22 The participant list for the Utah meeting is on the
23 website and I hope everybody has the URL for that.

24 And let me just go through some parking
25 lot issues that remain. I think we've addressed a lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of these issues. One of them was brought up very
2 early by Arjun which is a response from the NRC to
3 issues raised and from my discussions with the staff
4 on this issue and I'm going to have them correct me if
5 any part of this is incorrect and this ties into
6 another issue which is what is the Commission going to
7 hear about this meeting. I think the staff is going
8 to summarize notable issues from this meeting
9 including people who might have expressed disagreement
10 with this is the right route to go in terms of the
11 rulemaking and is going to submit that to the
12 Commission and, Larry, Patty, is that something you
13 think will be able to find its way onto the public
14 website at this point or are you still debating about
15 that about whether that's feasible?

16 MS. BUBAR: Larry can correct me if he
17 disagrees with how I'm describing this. But you're
18 right. We will get ourselves together and share our
19 observations as well as maybe look at the transcript
20 if we can get it in time and in between now and the
21 Salt Lake City meeting we will have a summary, a quick
22 summary, prepared of what we heard just so that we
23 want to make sure we're as prepared or better prepared
24 for Salt Lake City to address some of these issues
25 that we anticipate coming up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 As far as what we will tell or if we will
2 tell anything to the Commissioners, I think we're
3 still deliberating that internally as to whether we'll
4 do that in between now and the Salt Lake City
5 workshop. Certainly, we'll give them a note tomorrow
6 morning that will say that we had the workshop. You
7 know, participants were here and really good issues
8 were raised, things like that.

9 But we'll deliberately get ourselves
10 together, all the staff that were here, and make sure
11 that we clearly understand what are some of the issues
12 that we have to be prepared to continue to discuss for
13 the Salt Lake City workshop. But I don't know that we
14 have any answers to when we will communicate with the
15 Commissioners.

16 FACILITATOR CAMERON: All right. Thank
17 you, Patty.

18 This issue was answered by Larry, but I
19 just wanted to make sure that everybody understood
20 this, the issue of whether an environmental impact
21 statement should be done for this rulemaking. And
22 NEPA, National Environmental Policy Act, does apply to
23 major Federal actions including rulemaking.

24 Larry noted that the first step is to do
25 an environmental assessment and in that environmental

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 assessment is a determination of whether there should
2 be a full-blown EIS. Questions came up about the
3 timing of that. In some cases, that EIS/EA is done
4 when the proposed rule is published, but because of
5 the amount of preparation involved I think the staff
6 is going to have to think about what's feasible, when
7 that is to be done. And, Larry, do you want to say
8 anything else about that?

9 MR. CAMPER: No, I think that's a pretty
10 good summary, Chip. I mean when you step through the
11 environmental assessment process you trip to at some
12 point either a, FONSI, a finding of no significant
13 impact, or the need to, in fact, conduct an
14 environmental impact statement. The staff would step
15 through that process.

16 You have a regulatory basis to develop.
17 You have the rule to develop. And you have the
18 environmental assessment to do. Those are generally
19 done in parallel for the obvious reasons because one
20 of those affects the other.

21 But you're right. I think we'll just have
22 to wait and see as we progress further down the road
23 and actually get into the development of the rule just
24 how that will come together. But clearly we will be
25 doing an environmental assessment. It may or may not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 result in a full-blown EIS and that's a function of
2 the process.

3 FACILITATOR CAMERON: Thanks, Larry.

4 The one issue that was in the parking lot
5 that I'm not sure that we gave a clear answer to and I
6 see Duncan is gone, right? Okay. Well, did you all
7 get a clear answer? I mean a clear question was
8 raised. Is NRC guidance an element of the Agreement
9 State capability? Did we answer that? It was a
10 parking lot item and I thought it would be taken care
11 of during Duncan's but I'm not sure we got there.

12 MR. CAMPER: Well, I actually did discuss
13 it with Duncan when he was here. He just didn't bring
14 it up. I made the point yesterday that when developer
15 may rule and Duncan did have some information in a
16 slide that talked about the various types of
17 compatibility that are assigned and so forth.

18 The rule itself carries with it a level of
19 compatibility. A particular guidance document, a
20 NUREG, if you will for example, is not assigned a
21 level of compatibility. But what does happen is the
22 NRC staff and Agreement State representatives work
23 together in a working group in formulating that rule
24 and, of course, there's a great deal of coordination
25 that goes on with the Agreement States in the course

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of doing that. And similarly when guidance is
2 created, that working group or a working group
3 consisting of NRC and Agreement State regulators work
4 together to develop that guidance.

5 Then the question becomes one of the IMPEP
6 process and there's the state. There's a review of
7 the rule itself that the state will develop to address
8 the question of compatibility that is reviewed and
9 then in the course of conducting of the IMPEP and
10 looking at a vertical slice of how the state is
11 implementing a particular regulation. That level of
12 compatibility is reviewed and how is that going. But
13 a guidance document itself is not assigned a level of
14 compatibility.

15 FACILITATOR CAMERON: Okay. Thank you,
16 Larry.

17 I'm just going to go around and start with
18 Mike to see if you have any final observations for us
19 on anything that has been discussed and let's go to
20 Mike. Dr. Michael Ryan.

21 MR. RYAN: Thanks, Chip. I guess what I'd
22 like to offer is a thanks to the staff for preparing a
23 really thorough two-day workshop. You know, I think
24 we've covered a large number and all the significant
25 ones from my perspective on considering how to move

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 forward on the DU question.

2 I think we've had robust discussion on how
3 some of the things that might come as work products
4 from this effort could apply to other aspects of low-
5 level waste and the connection that some of these
6 things have to other issues in low-level waste. I
7 really appreciate everybody's presentations and
8 responsiveness in the dialogue of all the panel
9 members. I think it's a success from my point of
10 view.

11 FACILITATOR CAMERON: Thank you.

12 Greg?

13 MR. KOMP: Yes, I would also second that
14 thought by Mike. It's been a very good workshop, very
15 informative and I thought we got to the meat of a lot
16 of the questions that are germane to this process.

17 I would like to leave a final thought that
18 just a reminder that we are concerned with the variety
19 of waste streams, DU, everything from like we talked
20 about from the enrichment process. We do have some of
21 that we are left sometimes liable for as with -- a
22 couple years ago all the way through pure DU metal and
23 everything in between probably.

24 Thank you.

25 MR. MAKHIJANI: Yes, I really think this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was a very productive workshop. I really appreciate
2 how you moderated it and I think I want to thank
3 especially Dr. Pinkston and Dr. Esh for the clarity of
4 their presentation. I know it must have been a little
5 stressful sometime with the exchanges, but I really
6 think they couldn't have been the way they were if
7 your presentations weren't technically thorough and I
8 really appreciate that and I want to say that for the
9 record. I appreciate that a record was made.

10 And I think I would appreciate if an EIS
11 were done in this process. I think an EIS is required
12 by how huge these issues are. The alternatives need
13 to be properly considered.

14 And the one big concern I leave with is
15 that the present process has set us on a course that
16 is really leaning toward shallow land disposal in a
17 way that our research over many years, a decade and a
18 half about, on this subject indicates not appropriate
19 for depleted uranium in large amounts. And I'm very
20 concerned about that and I think the option of deep
21 disposal in a WIPP-like repository ought to be part of
22 this process and a consideration of the alternatives
23 or I would find it disconcerting if it were not
24 included.

25 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. D'ARRIGO: I am coming away with an
2 even greater concern about depleted uranium than I had
3 before. Also as usual I'm very concerned when
4 proposed rules are going to come out that allow for
5 clearance or deregulation on the low end and do
6 appreciate the opportunity to meet people and talk
7 about that.

8 I also feel like in reflecting to the
9 Commission the responses from the meeting there aren't
10 as many critics as there are and I just think the
11 stakeholder balance is as usual a little skewed. So
12 keep that in mind.

13 MR. KILLAR: I'd like to certainly thank
14 the NRC for conducting the workshop. I believe that
15 throughout the workshop the NRC did a commendable job
16 of explaining the issue and providing clarity on the
17 topics that were presented. I certainly like their
18 openness to take into consideration the various
19 aspects that were presented particularly as we talked
20 about the issues which should be a rule versus which
21 should in the guidance documents and I think that was
22 very effective.

23 One of my major concerns with this is
24 coming up with a definition of a unique and I think
25 that was very well handled and I think that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 potential path forward looks fairly positive from my
2 perspective at least. So I think from my perspective
3 it's been a very successful workshop.

4 MR. YEAGER: I appreciate the opportunity
5 to attend the meeting. I'll defer the comments on
6 behalf of South Carolina to Richard, but I do look
7 forward to facilitating contact between the
8 appropriate folks to get CRCPD and most of those folks
9 are also members of the OAS. So hopefully we can get
10 further interaction between states that have
11 experience and can bring that to bear as far as
12 assisting in the process.

13 MR. HAYNES: I would say thank you to NRC
14 for providing the conference. I also want to make
15 sure that Chip and Priya get praise for setting this
16 up and handling it, too.

17 Just to go on the record for South
18 Carolina, we still support the site-specific PA and
19 also would strongly encourage the time period that is
20 the performance assessment be clearly outlined whether
21 it's rule or in the guidance.

22 Thanks.

23 MS. GELLES: Thank you. I was waiting to
24 be called upon.

25 (Off the record comments.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I first want to say that I very much
2 enjoyed being a part of this workshop. So thank you
3 very much for the invitation. I'm honored to
4 represent the Department of Energy and hopefully it is
5 obvious now after two days of me beating this horse
6 that the Department of Energy applauds the NRC's
7 efforts to move towards a risk-informed, graded
8 approach, one that relies on site-specific performance
9 assessments and establishing a system that maintains
10 those and revisits them in an iterative process.

11 And to that end we look forward to
12 continuing to participate in this dialogue. I was
13 very impressed by the other members here on this
14 roundtable. I learned a lot and as a generator of DU
15 waste forms and I do use the plural it's important to
16 us that the ambiguities that exist right now do get
17 addressed. I do think there are a diversity of
18 perspectives on the matter, but I want to emphasize
19 the point that my colleague Greg made and that's that
20 there are waste forms that exist today that require
21 disposal and I think that that's an important reality
22 that we have to keep in mind as we move forward.

23 Again, I want to thank Chip for an
24 excellent facilitation and Priya and Patty and the
25 rest of your staff, Larry, for the help and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information that they've prepared so that this could
2 be a successful workshop. Thank you.

3 I don't think Bill has anything to say.

4 (Laughter.)

5 FACILITATOR CAMERON: Or you could have
6 said, "Here's one person who doesn't need an
7 invitation."

8 MR. DORNSIFE: Well, I guess I can say I
9 appreciate your indulgence of my comments as part of
10 the meeting and I, too, express my appreciations for
11 NRC putting this together. I think it was extremely
12 useful.

13 I do have a substantive comment and
14 question though. Coming to this meeting, my biggest
15 concern with this whole concept was period of
16 performance and I'd like to know what the NRC staff
17 has taken away from this discussion regarding period
18 of performance and what are their thoughts of how
19 they're going to deal with it based on that
20 discussion.

21 FACILITATOR CAMERON: Do you want to
22 handle that?

23 MR. CAMPER: Yes, that's a great question,
24 a fair question, and then, Dave, please follow. I'll
25 give you my perspective.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 First of all, at the moment, we are open
2 on this topic. I mean we have to go back and do a lot
3 of review of what we've heard here. Obviously, we
4 need to go have the meeting in Utah and get their
5 perspectives out there. So, at the moment, we've not
6 reached a conclusion.

7 From my vantage point, I made it a point
8 yesterday to ask a specific question because I was
9 looking for something we could take away. I mean we
10 got into what I thought was an extremely interesting
11 discussion about period of performance. There was a
12 great deal of dialogue about the complexity of a
13 period of performance, the variables to be considered,
14 and so forth and so on.

15 It was at what I thought at an appropriate
16 point in our discussion I asked two questions. One
17 was should the period of performance be specified in
18 the regulation as opposed to guidance. Generally, the
19 impression that I came away from the panel was yes.

20 And the second question I cited our NUREG-
21 1573 which talks about 10,000 years as a period of
22 performance for our regulatory decision making with
23 evaluation of consequences of long-lived isotopes in
24 the environmental impact statement. Generally, the
25 sense I got from the panel was that that was a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reasonable thing to do.

2 So from my vantage point again with the
3 qualifier that we've not reached any conclusions nor
4 will we until such time as we finish the workshops and
5 communicate further to the Commission and so forth, my
6 sense was they gave the staff something good to work
7 with to think more diligently about. I was pleased.

8 And what I always look for are these kinds
9 of things because there's always a great deal of
10 intellectualism and dialogue that goes on. I'm always
11 looking for a critical junction from a process
12 standpoint. Does the staff have something that it can
13 work with? Is there something that we can now go back
14 further and put our hands around? I certainly felt
15 that way at that point in the discussion.

16 Dave, would you add to that? Do you have
17 any other views?

18 MR. ESH: No, I think I came into it being
19 pretty open and I'm leaving being pretty open. I
20 heard a lot of different ideas, a lot of different
21 considerations, and it is an immense challenge and I
22 think the best we can do is assess collective opinion
23 of this group as well as the international community,
24 consider our other regulatory precedence and programs
25 and put all that together and see what we come up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with.

2 I think at a minimum what comes out of
3 that it's going to be clear. You're going to
4 understand it. Some of you may not agree with it.
5 But I can't make everyone happy when there's different
6 opinions. But that will at a minimum it's going to be
7 clear. You'll understand it and it will be well
8 thought out and it will reflect all the opinions that
9 I heard in this workshop.

10 FACILITATOR CAMERON: Tom.

11 MR. MAGETTE: I, too, would like to thank
12 the NRC for hosting the workshop. I think you did a
13 good job. I think it was well planned, well managed.

14 I applaud Chip for his incredible patience and
15 diligence. Thank you very much. I appreciate the
16 input from all the panelists. I think the exchanges
17 were very helpful, too. All and all I think it was
18 very productive.

19 I would like to just reiterate my view. I
20 think the proposed process is the right way to go. I
21 like what's happening. I think the rule should be
22 kept as simple as possible and I think it really
23 should do little besides state the requirement for the
24 performance assessment and state the period of
25 performance and I think also the notion of an intruder

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dose that's in guidance belongs in the regulations.

2 So I think everything else that we've
3 discussed is a matter for guidance and I'm glad to
4 hear what David has to say about his expectation that
5 it's going to be simple and straightforward. That's
6 kind of what I expect because I don't really see that
7 there's a need for anything else. But I would just
8 like to emphasize that that would be what I would
9 expect to see and would want to see. Thank you for the
10 opportunity to be a part of this.

11 FACILITATOR CAMERON: And thank you, Tom.

12 Larry is going to close us out, but I just wanted to
13 thank all of you for your enthusiastic participation.

14 It makes the meeting really fun and -- well, I don't
15 know really fun but -- I'm sorry.

16 (Laughter.)

17 Makes the meeting worthwhile. So I thank
18 you for that and thank all the NRC staff who did a lot
19 of preparation for this meeting and you've met a lot
20 of them through the presentations. But people like
21 Leah and Brooke back there did a lot to help and Priya
22 was just amazing to pull all this together for us.

23 (Applause.)

24 And we now have two mascots from the
25 Montgomery County Police. We love you guys.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Applause.)

2 Thank you for being here and thank you for
3 being interested in what this was all about, too.
4 That was great. That was fantastic.

5 And thank you to the attorneys. We should
6 not leave them out of this. They've been with them
7 all the way.

8 Larry.

9 MR. DORNSIFE: Can I have a quick
10 question?

11 FACILITATOR CAMERON: Sure. Are we
12 surprised?

13 MR. DORNSIFE: Some of us are going to be
14 also involved in the Salt Lake meeting. Is the NRC
15 planning on making any kind of comments at that
16 meeting about this meeting and how do you feel about
17 us relating discussions from this meeting to those
18 folks?

19 MR. CAMPER: Yes, we would certainly
20 provide some summary overview of what transpired here.

21 Yes, we do need to -- I mean I don't know if the
22 transcripts of the meeting will be available by then.

23 I don't know.

24 FACILITATOR CAMERON: It will be.

25 MR. CAMPER: They will be. So the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 transcripts will be out there. We'll probably do
2 something between now and then to make people aware
3 that those transcripts exist and how to get to them
4 and that type of thing. We certainly will provide
5 some feedback on what transpired here. Yes, we would
6 do that.

7 FACILITATOR CAMERON: And I don't think
8 that we're going to be able to constrain you from
9 doing whatever you want to do.

10 MR. DORNSIFE: You're in Utah again.

11 FACILITATOR CAMERON: And Tom is never
12 going to get the last word on this. But I don't want
13 to make the people who are coming to this Salt Lake
14 City workshop feel like this has all been discussed
15 and this is stale. So whatever we can do to maintain
16 that freshness and vitality out there is important.

17 Christine.

18 MS. GELLES: I certainly appreciate that
19 there is a need to leave open the possibility of a
20 good fruitful discussion in Utah and maybe some new
21 ideas and perspectives. But to the extent that we
22 reached very quick consensus on some of the key issues
23 -- and I'm thinking of things like defining
24 significant quantities, defining unique waste streams
25 -- I would hate to see us particularly since some of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the same people will be at the table spend another
2 hour and a half having the same conversation over
3 again.

4 So to the extent that you could summarize
5 where there was a very strong sense of consensus but
6 present it in a way that does not constrain continued
7 discussion I would encourage you to think about
8 whether or not that's possible.

9 MR. CAMPER: Yes, that's a good thing.

10 FACILITATOR CAMERON: I think that's a
11 good suggestion. It can be done in a way that
12 wouldn't cut out discussion of it, but we may be able
13 to give more time to other parts of the agenda by
14 indicating that. So that's something that we have to
15 talk about, Priya.

16 Thanks, Christine.

17 Tom, did you --

18 MR. MAGETTE: I agree with Christine.

19 FACILITATOR CAMERON: Okay. That sounded
20 like the last word in the Dornsife-Magette -- I don't
21 know what to characterize it as. And thank all of you
22 in the audience.

23 Larry.

24 MR. CAMPER: All right. Thank you, Chip.

25 Let me continue the thanks that I've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 heard. I want to thank the staff not only for the
2 work that went into preparing for this workshop, but
3 this is an issue that the staff has wrestled with,
4 worked on, now for two years or so. I must tell you
5 that looking back to all the many, many discussions
6 that I had with the staff on this issue along the way
7 the open dialogue that we had, the airing of strongly
8 held views and in-depth discussions of the technical
9 analysis throughout the process, the staff worked hard
10 on this issue.

11 It was a pleasure frankly for me to be in
12 these numerous meetings with them and recognize the
13 talent that I was surrounded by as we dealt with this
14 issue. It was at all times animated and likely and
15 intellectual and frankly gratifying. So long before
16 this meeting, the staff put a tremendous amount of
17 work into this issue and I thank them for it.

18 In terms of the meeting itself, Priya and
19 Dave and Karen and everyone on the staff that touched
20 this issue, a tremendous amount of work goes into
21 preparing for a workshop like this and I am very
22 grateful to the staff for this effort all along the
23 way and in preparing for this workshop.

24 The panelists, I mean, what can I say?
25 How would I begin to compliment you for your input,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your varied views, your challenging commentary, your
2 suggestions at how to procedure? All of it has just
3 been an extremely valuable part of this process. Your
4 expertise. Your experience. And, yes, the diversity
5 of your views. You can't overstate that. A terribly
6 important part of the process. And this rulemaking
7 effort will be better for it because of this workshop.

8 I want to thank the audience. There were
9 a number of interesting comments and questions raised
10 by the audience. It's not easy to sit out there for a
11 couple of days and you have thoughts and views on
12 things, too, and you've been very, very patient and at
13 times you offered commentaries. We appreciate that.

14 Chip, as always, you're masterful. You're
15 just very good at what you do. I've heard a number of
16 the panelists commend you on the way in which you've
17 handled this forum and I would only echo that. It's
18 really been a pleasure to work with you in that
19 regard.

20 Along the way, I mean this question of an
21 EA or EIS and what it should be. If one turns and
22 looks at NUREG-1748 which is our guidance document on
23 conducting environmental assessments, you'll find some
24 criteria listed there. If any one of those criteria
25 are tripped, it moves you toward environmental impact

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 statement. This is a very complex issue. I just
2 don't want to prejudge where we go. The process will
3 dictate where we go. But look at the criteria in
4 1748. It's pretty self-explanatory.

5 This is a challenging issue. There are
6 today approximately 700,000 metric tons of depleted
7 uranium that need to be disposed of. There will be
8 more depleted uranium coming down the pike in the
9 future presuming that these facilities are in fact
10 licensed. This is a challenging national issue. This
11 is a terribly important and complex topic that we're
12 wrestling with here.

13 This is the beginning of a regulatory
14 effort to address that. The Commission has directed
15 that we do this rulemaking as well as a risk informing
16 of the waste classification scheme.

17 And I think on that note I would probably
18 leave you with what I'll call one final basic message.

19 It goes like this. The NRC realizes the initial
20 assumption made during the development of the Part 61
21 waste classification table that all radionuclides not
22 listed on the tables by default or Class A could be
23 viewed as a faulty approach.

24 It was arguably erroneous to consider that
25 the waste streams considered in the Part 61 Draft

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Environmental Impact Statement were sufficiently
2 comprehensive such that a new waste stream, i.e.,
3 large quantities of depleted uranium, would not arise
4 in the future and be subject to this default
5 classification. In order to correct this problem, the
6 NRC plans and is undertaking its normal stakeholder
7 process and do a formal rulemaking addressing
8 stakeholder concerns and evaluating technical and
9 legislative factors associated with its safe disposal
10 of large quantities of depleted uranium. The NRC
11 believes this is the most prudent course to address
12 the existing waste classification issues associated
13 with depleted uranium and ensure that there is
14 adequate protection to the public health and safety.

15 The Commission has directed the staff to
16 do that in two parts, with limited rulemaking which
17 has been the subject of this particular workshop and
18 later look at the risk-informing waste classification
19 in Part 61. So we've embarked on a long journey, but
20 that's why we're doing it.

21 Let's subject this question of large
22 quantities of depleted uranium to a process. I thank
23 you for being a very important part of that.

24 FACILITATOR CAMERON: And when I talked to
25 Larry about the closing I said, "Just don't be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provocative" and he said, "What does that mean?" And
2 I said, "Well, don't say anything that causes someone
3 to put their name tent up."

4 (Laughter.)

5 Okay. But Mike has something different.
6 So you succeeded there.

7 MR. RYAN: Actually, it's a different
8 item, Larry. You did a great job at closing.

9 Mr. Morrison who has transcribed many,
10 many meetings that I've been at at the ACRS and the
11 ACNW is getting married this weekend. So I think we
12 owe him a round of applause for a great job and for
13 his upcoming wedding.

14 (Applause.)

15 PARTICIPANT: Take the rest of the day off.

16 (Laughter.)

17 FACILITATOR CAMERON: And we want to see a
18 transcript of the wedding.

19 MR. MAGETTE: And he's got a honeymoon in
20 Salt Lake City.

21 (Laughter.)

22 FACILITATOR CAMERON: Off the record.

23 (Whereupon, at 5:14 p.m., the above-
24 entitled matter was concluded.)

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701