

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: BRIEFING ON STATUS OF ENHANCED PARTICIPATORY
RULEMAKING

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NUCLEAR REGULATORY COMMISSION

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BRIEFING ON STATUS OF ENHANCED
PARTICIPATORY RULEMAKING

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Friday, June 4, 1993

The Commission met in open session,
pursuant to notice, at 10:00 a.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner
E. GAIL de PLANQUE, Commissioner

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

MARTIN MALSCH, Deputy General Counsel for Licensing
and Regulation

JAMES TAYLOR, Executive Director for Operations

DONALD A. COOL, Branch Chief, Radiation Protection and
Health Effects Branch

FRANCIS CAMERON. Office of the General Counsel

MICHAEL WEBER, Section Leader, Regulatory Issues
Section, NMSS

EUGENE DURMAN, Office of Radiation and Indoor Air, EPA

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

10:00 a.m.

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

This morning's meeting is for the purpose of receiving a briefing from the NRC staff and also from the EPA on the status of enhanced participatory rulemaking. When completed, this rulemaking will establish important radiological criteria for final decommissioning for NRC license sites.

We are fortunate to have with us today, in addition to our own staff, Eugene Durman, who is Deputy Director of the Environmental Protection Agency's Office of Radiation and Indoor Air. Mr. Durman will address what regulatory initiatives EPA is pursuing in the cleanup and waste management area in parallel and apart from the NRC effort.

Among the reasons that the NRC's enhanced participatory rulemaking effort is referred to as enhanced are the provisions in the project plan for public workshops in close coordination with the EPA. When the staff's plans for this novel effort were approved by the Commission in October 1992, the plans called for a total of seven regional workshops involving a wide range of interested and informed

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1 participants. This is an especially appropriate time
2 for the Commission to review progress in this effort.
3 All seven public workshops have been held and it's now
4 time to move to the next major steps in the process,
5 the production of a supporting draft generic
6 environmental impact statement and the generation of
7 draft radiological criteria.

8 Today's meeting will review for the
9 Commission the nature of the workshop discussions and
10 the results and how these will be included from here
11 on out as the staff moves forward. In my personal
12 opinion, this effort presents a real test of the NRC
13 staff's and of the NRC's own ability to appropriately
14 take into account a wide range of public views and
15 perspectives. On a larger level, it is also a test of
16 the federal government's ability to act in a fashion
17 which appears consistent to the general public while
18 both our Agency and EPA each move to carry out our own
19 independent statutory responsibilities.

20 The Commission is very interested in this
21 important first-of-a-kind effort and eager to hear the
22 staff's report and plans for the future. In a larger
23 context, it's also important for us to understand the
24 nature and timing of the related EPA activities and so
25 we're particularly pleased to welcome you this

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1 morning, Mr. Durman.

2 Do any of the Commissioners care to make
3 an opening comment?

4 Mr. Taylor?

5 MR. TAYLOR: Good morning. With at the
6 table this morning, in addition to Mr. Durman, are
7 Chip Cameron from the Office of the General Counsel,
8 Donald Cool from the Office of Research, and Mike
9 Weber from the Office of Nuclear Material Safety and
10 Safeguards.

11 As the Commission is aware, we began this
12 activity with the Commission's approval back in
13 November of 1992, and the staff recently completed the
14 rulemaking workshops across the country to solicit
15 early views on rulemaking issues from a diverse group
16 of participants, as you will hear. I would note that
17 the workshop process was generally very well received
18 by the participants and the public and has generated
19 useful information for staff consideration.

20 Today the staff is going to present a
21 status report on this activity, along with an overview
22 of the viewpoints expressed in the workshops.

23 I will now ask Chip Cameron to start the
24 formal presentation.

25 MR. CAMERON: Thank you very much, Mr.

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1 Taylor.

2 Good morning, Doctor Selin, Commissioners.

3 As Mr. Taylor noted, this morning we're
4 going to provide you with a status report on the
5 enhanced participatory rulemaking.

6 (Slide) Could I have the second slide,
7 please?

8 I'm going to begin with a brief overview
9 of the workshop process. Doctor Don Cool will then
10 cover some of the major viewpoints on the substantive
11 rulemaking issues that were expressed at the
12 workshops. Gene Durman from the EPA will then bring
13 us up to date on EPA activities in the area of cleanup
14 standards. Mike Weber is also at the table with us
15 today to assist us in the discussion. Don and Mike
16 and I were at the table for the NRC at each of the
17 workshops and Gene or one of his principal staff were
18 at the table for the EPA. In the latter part of the
19 briefing, we'd like to discuss the two issues
20 highlighted in SECY-93-152, one concerning additional
21 scoping meetings on the generic environmental impact
22 statement for the rulemaking, and the other on early
23 release of the draft rulemaking criteria to the
24 public.

25 As both the Chairman and Mr. Taylor have

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1 pointed out, we've recently completed the last of
2 seven workshops across the country to get advice and
3 recommendations on the issues that need to be
4 addressed in the site cleanup rulemaking.

5 (Slide) Could I have the next slide,
6 please?

7 We had very active participation in the
8 workshops from a broad spectrum of affected interests,
9 from state governments, both agreement states and non-
10 agreement states, from local governments who have
11 experience in decommissioning projects, from tribal
12 governments and tribal organizations such as the
13 National Congress of American Indians, Native
14 Americans for a Clean Environment, and the Council of
15 Energy Resource Tribes. We've had good participation
16 from citizen groups, including environmental justice
17 groups.

18 We've had various segments of the nuclear
19 industry represented in each workshop, utilities,
20 other types of fuel cycle facilities, the medical
21 community, including radiopharmaceutical
22 manufacturers, sealed source manufacturers and cleanup
23 contractors. And we've had professional societies
24 represented at each meeting. The Health Physics
25 Society and American Nuclear Society have sent

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1 representatives to each of the workshops.

2 Finally, we've also had federal government
3 agencies, such as the Department of Energy and the
4 Department of Defense, at the workshops.

5 The Environmental Protection Agency was
6 fully involved in workshop preparation and
7 implementation. They assisted us in the preparation
8 of the rulemaking issues paper, which was the focus
9 for workshop discussions. They were at the table with
10 us at each workshop. We're continuing to work
11 together on the technical underpinnings for the
12 development of the standards, such as modeling
13 strategies and the development of cost benefit
14 information. We're also working together to evaluate
15 the workshop comments as a basis for developing the
16 standards.

17 The participants in the workshops brought
18 a wide range of knowledge and experience to the table.
19 Some had technical or legal knowledge of the
20 rulemaking issues. Others brought the benefits of
21 their experience and expertise in regard to individual
22 sites. Most of the participants at the workshops were
23 well prepared and provided thoughtful commentary on
24 the issues, some of it of a technical nature, others
25 with a policy emphasis.

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1 The workshops were not only well attended
2 by participants that were around the table, but also
3 by the public. We had anywhere between 70 and 125
4 people in the audience for the workshops and we
5 provided ample opportunity for public comment and
6 question throughout the workshops. This produced some
7 spirited discussions, as well as some skits and some
8 peaceful demonstrations.

9 One useful innovation that we applied to
10 several of the later workshops was instituting a night
11 before the workshop sessions for the public. This was
12 intended to provide people who could not attend the
13 daytime session with an opportunity to come in and
14 talk with the NRC and EPA staff on the rulemaking
15 process and to give us their comments on the issues.
16 We had a good turnout for these sessions. We
17 conducted these in an informal manner and these
18 sessions resulted in some good discussions and seemed
19 to produce a better understanding of what the
20 Commission intended in this particular rulemaking.

21 (Slide) Could I have the next slide,
22 please?

23 I believe that the workshops were a
24 success on a number of levels. First, the process was
25 viewed very positively by participants and the public.

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1 The record is full of supportive comments on the
2 process from all viewpoints. These positive comments
3 emphasized a number of features of the workshop.
4 First the opportunity for early comment on the issues
5 before the proposed rule was issued and the Agency
6 position had solidified. Citizen groups in particular
7 emphasized that the workshop process gave them the
8 opportunity to participate on an equal basis with
9 industry and other interests. Many groups expressed
10 the opinion that this was the first experience with
11 any government agency where they felt they were being
12 treated on an equal basis with other interests. The
13 participants believed that the workshops were a very
14 real opportunity to influence Commission decision
15 making and felt that the Commission was truly
16 interested in receiving their advice and
17 recommendations.

18 A second level of success from the
19 workshop process was the educational value of the
20 workshop discussions to not only the NRC staff, but
21 also to the participants around the table. The
22 workshops provided participants with the opportunity
23 to meet and talk with people who had different
24 perspectives on the issues and at a minimum brought
25 participants a clear understanding of the motivations

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1 and concerns of other participants. In some cases,
2 the workshops resulted in the clarification of
3 misperceptions that people might have had about a
4 particular aspect of the issues.

5 The workshops also resulted in a number of
6 valuable ideas for consideration by the NRC staff that
7 may not have been brought to light in the normal
8 rulemaking process. I'm not going to go into any
9 specifics now. We'll save that for Doctor Cool's
10 presentation on the issues, but I would note that the
11 discussions alerted the staff to many issues that we
12 might not have considered at all because it's not part
13 of our usual regulatory culture, alerted us to issues
14 where our perception of public and participant
15 viewpoints would have been 180 degrees off base.

16 Finally, the workshop discussions alerted
17 the staff to possibilities on how the issues could be
18 woven together to form an acceptable regulatory
19 framework. I think Don's discussion of the issues
20 will demonstrate how productive these workshop
21 sessions were.

22 A last level of success is that the
23 workshops provided the Commission with a valuable
24 network of contacts around the country that we can
25 benefit from in terms of future regulatory actions.

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1 This information base was not readily accessible
2 before. As a result of the workshop process, we know
3 what groups are concerned about nuclear issues in a
4 particular region of the country. We know who is
5 influential not only from the citizen group
6 perspective, but also from the industry and government
7 perspective.

8 One final point that I would like to
9 emphasize is that the ultimate credibility of the
10 process will depend on the serious and thoughtful
11 consideration of the workshop comments in developing
12 the draft rule. Doctor Selin has already made this
13 point.

14 Thoughtful consideration doesn't equate to
15 reaching outcomes that totally agree with a particular
16 point of view, but rather in demonstrating that our
17 decision making process has been informed by
18 participant comments.

19 Before turning it over to Don, I'd like to
20 compliment the Keystone Center for their excellent
21 assistance on the project. No one from Keystone was
22 able to be with us today, but I would like the record
23 to show that they did an excellent job in helping us
24 to develop a workable agenda, in contacting
25 participants, in arranging the logistics for the

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1 workshops and in facilitating the meetings themselves.

2 At this point we could either go to Don
3 for the overview of the issues or answer any questions
4 that you have on process.

5 CHAIRMAN SELIN: Questions will come when
6 people have them.

7 MR. CAMERON: Okay.

8 CHAIRMAN SELIN: My general advise to
9 people who appear before us is try to keep talking
10 until --

11 MR. CAMERON: Excellent idea.

12 CHAIRMAN SELIN: Doctor Cool?

13 DOCTOR COOL: In that spirit, good
14 morning, Mr. Chairman and Commissioners.

15 As you will recall when we submitted the
16 initial plan, we also provided you with the rulemaking
17 issues paper which formed the basis of the workshop
18 discussions. That was formatted along the line of
19 several primary issues and a number of secondary
20 issues, secondary not in the sense that they were of
21 any lesser importance, but that we wanted, in fact,
22 people to focus particularly on them and they didn't
23 fit into necessarily one of the primary ones. We had
24 also in that paper provided four possible approaches
25 that the Agency might take, a limitation approach

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1 similar to what we do in Part 20, a goal type of
2 approach similar to the way EPA approaches a number of
3 its standards, a best effort type of approach,
4 applying some particular kinds of technology or a
5 return to background approach, applying existing
6 radiological background prior to the existence of the
7 facility as the criteria.

8 As we actually ran the workshop, we did
9 not attempt to march through those in a sequential
10 fashion because we wanted people to try and compare
11 and contrast those possible approaches rather than for
12 the few people who were interested in limits, talking
13 about limits while everybody else sort of sat around
14 and waited. Instead we tried to use a series of what
15 we call cross-cutting issues.

16 (Slide) If you could give me the next
17 slide, please.

18 Those cross-cutting issues focus first on
19 how the possible approaches would protect human
20 health, safety and the environment, what kind of
21 levels you'd set, whether they would provide what the
22 participants viewed as acceptable or not acceptable
23 levels of protection and why.

24 A second cross-cutting issue was the waste
25 management implications, were there differences in the

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1 approaches which would result in differences in terms
2 of the impacts in waste management, both material to
3 be removed from the site, what you might do with
4 material that remained on the site.

5 A third cross-cutting issue which we used
6 was the relationship to the existing frameworks that
7 we had in place, how would this dovetail in with what
8 the Commission has said in the past with regard to
9 limits and exposures of individuals, how it would
10 dovetail in with the EPA criteria that are existing,
11 particularly things like Superfund, the Resource
12 Conservation and Recovery, RCRA requirements and some
13 of those other things which would come into play at a
14 site at some point either during our process or
15 perhaps later after the Commission had released the
16 site.

17 And finally, whether or not there were, in
18 fact, technical capabilities out there to actually
19 carry out the sorts of things that were being
20 considered and how those might fit into the framework
21 from cost standpoints, implementation standpoints,
22 enforcement types of standpoints.

23 (Slide) If we can go to the next slide.

24 As Chip has already alluded to, we got a
25 wide diversity of opinion. We have been logging all

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1 of the things from the transcripts of the workshop and
2 the summaries of the workshop into a database in an
3 attempt to categorize those. We have over 4,000
4 individual entries in that database at this point and
5 we're still receiving things. We have instituted an
6 electronic bulletin board to allow individuals yet
7 another opportunity to submit us comments, interact
8 with us, obtain information on what's going on. We
9 now have people who are uploading comments into that
10 database as well and so that's working and we continue
11 to receive that input.

12 Thankfully, the purpose was not consensus
13 because we had people on both sides of the fence
14 expressing a wide variety of viewpoints. One of the
15 things that was intriguing to watch was the way in
16 which the dynamic worked over the two, or in the case
17 of the evening sessions, two and a half days where
18 people would start -- and in fact we specifically gave
19 them an opportunity to state what their particular
20 concerns, their primary issues were. And then as we
21 went around the table and began to look at these
22 cross-cutting issues, the way in which people would
23 clarify what they had said, the way in which they
24 would consider and perhaps even modify to some extent
25 the way that they had expressed their viewpoints and

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1 trade information back and forth over the course of
2 time. It was particular clear to us how important the
3 entire two days were because, as you may recall, we
4 went up to Boston and succeeded in being there for the
5 great snowstorm of '93 and we were cut short from the
6 second day. That workshop did not, thereby, generate
7 the same level of dynamic from the second day and a
8 lot of folks never got off of the initial statement of
9 positions viewpoint. So, it was really very important
10 to have the entire time that we used to allow people
11 to interact and to really explore the issues.

12 (Slide) If I could have the next slide.
13 We're going to -- I'm going to try and
14 give you very briefly some of the viewpoints --

15 CHAIRMAN SELIN: Doctor Cool, one thing I
16 didn't understand. Did you have an evening session
17 before every one of these --

18 DOCTOR COOL: No, we did not. The evening
19 session was instituted at the Dallas workshop, which
20 was actually the third workshop of the series. We put
21 that in place specifically at the recommendation of
22 the participants from the first couple of workshops
23 thinking it would be nice to get together, have an
24 opportunity to explore, a number of people saying they
25 had a lot of folks who were part of their groups or

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1 they knew about who couldn't attend because they had
2 jobs or otherwise. So, that was an enhancement we put
3 in about halfway through the series.

4 CHAIRMAN SELIN: Did it just become a two
5 and a half day session or was it qualitatively
6 different from the daytime sessions?

7 DOCTOR COOL: It was qualitatively
8 different in the sense that we allowed a more open
9 discussion. It was free flowing and ranging and we
10 worked through each of them. It was very similar in
11 the sense that the issues raised were very similar to
12 the things that were brought up, used a number of the
13 same viewpoints. We did it in just a round table. We
14 pulled the chairs around in a circle and in a very
15 relaxed back and forth fashion took a record of that
16 using our Keystone facilitators. We would always have
17 one of them back sort of behind the ring of chairs
18 writing down all of the things that were being
19 discussed, although those evening sessions were not
20 transcribed.

21 CHAIRMAN SELIN: And did a lot of the
22 people who came to the evening sessions then come to
23 the next two day sessions?

24 DOCTOR COOL: We had a lot of folks who
25 came to the evening session who did come to the two

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1 day sessions. We had a number of people who were
2 participants who came that evening. We had a number
3 of people who were in the audience for the other two
4 days. But we also had a number of people who were
5 there who were not able to come back and that was
6 their only opportunity.

7 CHAIRMAN SELIN: Thank you.

8 DOCTOR COOL: The viewpoints that I'm
9 going to give you are a few selected ones. Obviously
10 there's no way I'm going to be able to in any
11 relatively brief period of time capture all of them.
12 So, for anyone who doesn't see their favorite one up
13 there, this was not an attempt to exclude anybody, but
14 simply to reflect on some of the things which appeared
15 a little more often, would appear perhaps to be a
16 little more important to us as we begin the
17 discussions.

18 (Slide) If I could have the next slide.

19 One of the things that we heard very
20 clearly every single time out there was that the
21 definition of decommissioning which we set out in the
22 1988 rule, which focused on release for unrestricted
23 use, was a paradigm that was not going to be
24 immediately accepted as the ultimate objective by a
25 lot of people that were out there. That whole issue

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1 was questioned as to whether or not, one, unrestricted
2 use could be achieved in all situations and, two,
3 whether or not it, in fact, ought to be achieved in
4 situations from all standpoints, some people
5 indicating a viewpoint that you might not necessarily
6 want to take it back there if you were thinking of
7 bringing in another activity which might involve
8 radioactive materials or nuclear activities, setting
9 aside in some way particularly for continued use in
10 that aspects and not draining perhaps all of the
11 resources that might be necessary when it could be
12 continued to use for some particular kind of use where
13 you didn't have to get to that level of criteria.

14 Another one of the things that we heard
15 very clearly was that there should be public
16 participation throughout the process, not only in the
17 rulemaking effort that we were engaging in, but then
18 on a more site-specific basis as it was implemented in
19 each particular case. This had a variety of support
20 from a lot of the different interest groups, not only
21 citizens groups around the sites but local government
22 groups who were interested in what might happen to the
23 particular land use. They're concerned about tax
24 bases, industry bases, continued employment, a whole
25 variety of issues where they really wanted and

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1 expressed the viewpoint that they have a mechanism for
2 participating in the process of what would be done at
3 a particular site. One of the things that was related
4 in correlation to that was a number of folks raising
5 the EPA Superfund model which provides for funding for
6 citizens group, local government types of groups for
7 technical assistance so they could understand the
8 issues, perhaps split samples or otherwise be
9 participating in an understanding of whether or not
10 the process had been completed. A viewpoint expressed
11 that there should be -- the Commission should consider
12 some kind of funding provisions, perhaps some
13 percentage of whatever would be spent for the
14 decommissioning. The five percent number was thrown
15 around in a number of cases, a couple of different
16 models expressed for the way in which that might be
17 funded, one of them being set aside some of the
18 licensees' funds which are being set aside under the
19 financial assurance to be applied to that particular
20 aspect. So, we heard a lot of viewpoints in terms of
21 them being able to be involved in a knowledgeable
22 participatory way.

23 A lot of people focused in on the return
24 to background at the site as being the ultimate
25 objective of the site. People going back and looking

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1 at the history of what was expressed way back in the
2 beginning, indicating that their recollection at least
3 was that when nuclear power was started that the
4 statements made at that time were that it would be
5 returned to the way it was before when we got all said
6 and done. So, obviously, that should be the place
7 that we should try to achieve.

8 (Slide) If I could have the next slide.

9 In terms of the four possible approaches
10 that we laid out in our issues paper, the limits
11 approach was viewed by a wide variety of interest as
12 being an extremely important approach. A lot of
13 people were focused in on the need to be able to
14 demonstrate compliance and know that you had
15 accomplished whatever it was that you had
16 accomplished, and limitation being viewed as one of
17 the easier ways of determining whether or not you had
18 achieved what you wanted to achieve.

19 CHAIRMAN SELIN: I think your slide is one
20 slide behind.

21 DOCTOR COOL: We need to go to the next
22 one, number 9, Pat.

23 At the same time, however, the limitation
24 approach was, I think, connected in a lot of people's
25 minds with values that are already out there, the Part

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1 20 value of 100 millirem per year or values up in that
2 range. So, a lot of people mentally tied together a
3 limit approach with a value which they perceived as
4 being too high in terms of a possible risk that would
5 be connoted with that for them to be particularly
6 comfortable. So, there was both some pros and cons to
7 that particular approach.

8 Likewise, the goal approach had some pros
9 and cons expressed to it, people generally connoting
10 a goal approach with a value that would be more
11 acceptable in terms of risk, but perhaps less
12 desirable in terms of knowing whether or not you had
13 achieved it, whether or not you could demonstrate from
14 purpose of enforcement compliance types of standpoints
15 that you'd actually achieved what you wanted to
16 achieve.

17 The best effort approach generally was
18 seen as less desirable than some of the other
19 approaches, viewed in a lot of circumstances in a way
20 apply some particular approach and then be able to not
21 have to go any further, not have to consider whether
22 or not some other technology in a particular
23 circumstance would work better or in a way forcing
24 technology to look at new possible approaches. If the
25 best effort was codified in some way, then there would

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1 perhaps be no incentive to try and do better. So,
2 there were a number of negatives expressed on that.

3 As I already indicated, returning to
4 background seen by a lot of folks as being the
5 ultimate objective. But on the other hand,
6 recognizing that it could possibly be difficult to
7 measure, determine whether or not you had achieved it
8 and the whole definition of what you might consider to
9 be background being a little bit up in the air yet.
10 Several of the workshops, particularly in Philadelphia
11 where there was a broad ranging discussion on what you
12 meant by background, what the variations were, how
13 that might differ from zero, put quotes around it one
14 way or another, whether it ought to be background at
15 the time the site was built, background before the
16 nuclear age and testing of nuclear weapons, how you
17 might measure variations locally, geographically,
18 regionally. So, a number of good points brought out
19 that were related to how you might apply that
20 particular approach.

21 (Slide) If I can go ahead and have the
22 next slide, it's slide number 10.

23 There was a great call for the need for
24 flexibility both in the regulations and then in the
25 implementation of those regulations on a site-specific

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1 basis. A lot of people believing that there needed to
2 be flexibility in the approach the Commission would
3 take, recognizing the fact that not all sites are the
4 same. A call, for example, for there perhaps to be a
5 taxonomy in terms of our licensees. Some licensees
6 are simply using sealed sources and for them it ought
7 to be very simple to decommission the facility. So
8 long as the sources leaked, removed the source. So,
9 perhaps one set of requirements which would be
10 relatively simple to implement could be applied to
11 them, recognizing that there's another class that deal
12 with relative short half life kinds of material and
13 therefore the risk might be relatively low because
14 that material would be decaying away rapidly. On the
15 other hand, sites where there's going to be materials
16 around for relatively long period of time, uranium and
17 thorium, some of the materials that have extremely
18 long half lives and how to deal with them.

19 Another measure of flexibility that came
20 up was whether we want to perhaps consider a
21 difference between sites which exist today and which
22 we have to do something with as opposed to sites which
23 might come into play in the future and for which the
24 Commission might have an opportunity to, at the very
25 beginning of the process, apply more stringent

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1 criteria, recognizing that they could then internalize
2 that and plan for the very beginning and take that
3 into consideration as they went through the effort.

4 The whole concept of ALARA, the as low as
5 reasonably achievable philosophy that the radiation
6 protection community has used over the course of time
7 to try and reduce doses. As you might suspect,
8 supported generally speaking by industry and
9 professional societies, those organizations that have
10 a relatively large measure of experience in applying
11 it and view it as an ongoing operational philosophy
12 that they apply every day, but distrusted in some
13 sense by citizens groups, other kinds of individuals
14 who see it as perhaps a mechanism for not doing as
15 good a job as you maybe need to do, being able to stop
16 a little bit short because of, well, maybe it cost too
17 much or maybe it's not practical and the whole
18 question of what is reasonably practicable to achieve
19 in a particular context. So, some pros and cons to
20 that particular viewpoint.

21 That fed right into the last bullet which
22 is on that slide, disparate views with regard to the
23 role that cost should play. Should cost play a role
24 at all? Some people believe that cost should take
25 absolutely no place in our considerations at any

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1 point. If you're going to return it to background,
2 you're going to return it to some sort of zero
3 preexisting level, then you ought to achieve that and
4 do whatever it takes to achieve that, to views on the
5 other side that costs obviously need to come into
6 play. Everything in the middle, set some sort of
7 criteria and then work cost below it. People would at
8 that point in the discussions often begin to start to
9 blend the approaches and express viewpoints which
10 would meld together several of the possibilities.
11 They limit and then have cost works in below it or set
12 a goal and see how close you could get to it,
13 recognizing cost at some particular point into the
14 picture. Those discussions were very valuable as
15 people started to try and consider what might actually
16 be a workable approach in a particular context.

17 COMMISSIONER REMICK: Don, your use of
18 cost in this context, I assume it's dollar costs
19 you're --

20 DOCTOR COOL: Generally speaking they were
21 dollar costs.

22 COMMISSIONER REMICK: Because when you
23 mention costs in the context of this bullet, are you
24 also talking about costs of other risks, of various
25 alternatives, such things as the risk of transporting

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1 and moving material to other sites and so forth? In
2 other words, are you talking about just the dollar
3 costs --

4 DOCTOR COOL: I wasn't focus --

5 COMMISSIONER REMICK: -- of the various
6 options or all costs?

7 DOCTOR COOL: I wasn't focusing on it in
8 this particular bullet. On the next slide, which is
9 slide 11, one of the other points that really came out
10 very clearly was the fact that people were recognizing
11 that there were a wide variety of risks that ought to
12 be taken into play. And you're quite right, as I've
13 indicated on that second bullet, not only radiological
14 risks and costs associated with how much effort you
15 would come into play, but taking into consideration
16 occupational risks, both radiological and non-
17 radiological. There is a risk associated with running
18 a bulldozer around and running the heavy kinds of
19 equipment that are used to remove concrete and
20 demolish buildings and some of the chemicals and other
21 things that you would use to decontaminate facilities,
22 build that into it. Public risks, again not only
23 radiological but non-radiological, transportation.
24 Wide sentiment expressed in most all the workshops
25 that transportation was important. The fact that you

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1 were going to move it around and thereby expose, and
2 I'll use that in an extremely general sense,
3 individuals to the fact that there are trucks going by
4 and there are things moving back and forth, creating
5 hazards not only from the material they're carrying
6 but simply by virtue of the fact that those things are
7 moving around in the highway systems, all ought to be
8 taken into account in some manner. Those do dovetail
9 together very closely with what might be considered as
10 costs.

11 One of the other things we heard, and it
12 came out very clearly, was that people were very
13 concerned about enforcement and compliance, both the
14 industry side, who -- one of the consistent themes
15 was, "Tell me what we need to get done so that we can
16 go off and do it," and from the local groups, the
17 local government groups, "Let's have something that we
18 know it will be accomplished," because of the concern
19 that they won't actually do what needs to be done, all
20 of which comes to the same standpoint that having a
21 well-defined target that they know when it has been
22 achieved and it's been agreed to that they've achieved
23 it, it was very important to virtually everybody who
24 was around the table.

25 Last --

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1 COMMISSIONER REMICK: Don, continuing on
2 the discussion that there are many costs besides
3 dollar costs, isn't that truly a NEPA issue also? In
4 other words --

5 DOCTOR COOL: Yes. Yes. That certainly
6 is a NEPA issue and one of the things that my staff is
7 particularly looking at as we now begin the GEIS
8 process, one of the things that we think is going to
9 be a major player in that, is what kind of levels can
10 you measure and with what kind of instrumentation.
11 What kind of effort will be taken to reduce it to a
12 specific level because my expectation, and here I'll
13 just give you my personal expectation, is that there
14 will come some point, I'm not exactly sure where that
15 is, where you will need to switch over to more
16 sophisticated technology. I'll no longer be able to
17 walk over the site and be able to say, "Yes, it meets
18 it," or, "No, it doesn't meet it. I'll have to take
19 samples and send it off someplace." That's going to
20 start to raise the costs and at what point that comes
21 into play. It's most certainly going to -- as we try
22 to take into account why we might set it up.

23 COMMISSIONER REMICK: The reason I raise
24 that question now, later on when you recommend that we
25 have additional scoping meetings, it seems to me that

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1 in my mind I can't separate out these meetings from
2 scoping meetings for environmental impact statements
3 because many of the same items are discussed in both.
4 But we'll come to that later. I don't want to divert
5 you now.

6 DOCTOR COOL: That's true.

7 COMMISSIONER REMICK: But there's a reason
8 why I ask that question of you now.

9 DOCTOR COOL: Yes. We'll get to that.
10 And you're quite right, there is a high degree of
11 relation between the kinds of issues that ought to be
12 addressed. Give us a minute or two and we'll talk
13 about how we see the differences between that next
14 step and the step we've just completed.

15 The last thing I wanted to talk about in
16 terms of viewpoints was the waste disposal issues
17 coming into play. One of the things I don't think we
18 really anticipated going into these workshops was how
19 strongly people viewed the interrelationship between
20 waste disposal and what would be considered as waste
21 and where that material would go to the setting of the
22 criteria. One of the things that I don't think we
23 expected at all was the number of people who believe
24 that we shouldn't generate any new sites and a
25 willingness that was expressed that perhaps we ought

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1 to consider taking some of the sites that are
2 presently existing there and using them for containing
3 the waste, encapsulate it in some way so that it was
4 totally isolated from the environment and leave it
5 there as opposed to moving it someplace else and
6 thereby exercising all those additional transportation
7 costs and other costs and contaminating an area which
8 up until that moment was pristine.

9 So, it came into play in a variety of ways
10 which we didn't really anticipate. That was something
11 which I think was particularly beneficial.

12 That completes a very brief overview of
13 some of the particular issues that we heard there,
14 certainly not all of them. It gave us a tremendous
15 range of things as food for thought as we apply this.

16 I'm now going to turn it over to Eugene
17 Durman, who is the Deputy Director for the Office of
18 Radiation and Indoor Air, to talk a little bit about
19 where EPA is in this particular parallel process with
20 us and some of the viewpoints that they have.

21 Gene?

22 MR. DURMAN: Thank you, Don.

23 First I would like to thank the NRC for
24 inviting us here today to share our views, and also
25 for inviting us into the overall process that you're

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1 being briefed on today.

2 Participating in this process has given us
3 a preview of what to expect from the various publics
4 that we have to serve and I think it's allowed us to
5 reaffirm the importance of early public input into the
6 rulemaking process and has allowed us to hear some, I
7 think, very interesting ideas about how to facilitate
8 that input. I would endorse Chairman Selin's notion
9 that this really is and continues to be an exercise in
10 good government in terms of two agencies working
11 together, trying to listen to their constituencies and
12 develop a sensible, consistent approach.

13 I'd like to note parenthetically, and
14 again for the record, that I think the NRC was very
15 well served by its official representatives at these
16 sessions. Mike Weber, Don Cool, Chip Cameron were
17 very helpful to us, made us very much a part of the
18 process and they were excellent diplomats, calm under
19 fire and good ambassadors for the NRC to the public.
20 So, I think, as I said, you were well served.

21 COMMISSIONER REMICK: I strongly agree
22 with that from my observation.

23 MR. DURMAN: I'd like to give you a little
24 background of our own participation and why we're
25 involved in these standards. As you may know, in

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1 recent years we've come under fairly intense pressure
2 from both Congress, from various federal agencies such
3 as Department of Energy, Department of Defense and
4 even OMB, to provide some guidance or guideposts in
5 the whole issue of how clean is clean, particularly
6 focused on some of the major DOE sites,, but generally
7 across the board.

8 As a result of this interest, we did
9 commit to undertake a two part rulemaking, one focused
10 on cleanup, one focused on waste management
11 regulations. Obviously, as you've heard, they're
12 intertwined. We see cleanup basically addressing at
13 a geographical site how clean is clean. Waste
14 management addressing basically the disposal of waste
15 generated during the cleanup. We also recognize that
16 this involves such issues as potential recycling,
17 reuse of existing structures, equipments and metals
18 after the cleanup. For a variety of reasons, we're
19 focusing our initial effort and what I'm really
20 talking about today is the cleanup portion of that
21 multiphase activity.

22 (Slide) Do we have our slides? I'm on
23 slide 2, if you have them.

24 CHAIRMAN SELIN: If you call for a slide,
25 it will appear as if by magic.

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1 MR. DURMAN: Okay. I think we're on the
2 next one.

3 Our major goals are, first of all, to
4 protect human health and the environment and to
5 facilitate the cleanup of sites contaminated with
6 radionuclides. The coverage, because this is a
7 generally applicable regulation, would be to all types
8 of contaminated sites. This would include the
9 Superfund sites, the federal facility sites in the
10 Department of Defense, and at least initially sites
11 licensed by NRC and agreement states. As you know, we
12 have a memorandum of understanding signed by EPA and
13 NRC in March of '92 that seeks to ensure that the
14 duplicity of regulations will be avoided and that the
15 primary goal is to protect human health and the
16 environment.

17 We also forged in September of '92 draft
18 testimony which we were able to get into the record
19 even though the hearing was never heard and the
20 congressman is no longer in office --

21 CHAIRMAN SELIN: That's really very
22 effective testimony.

23 MR. DURMAN: Yes. That does affirm an
24 approach under which EPA will make a determination
25 that the NRC's proposed regulations are sufficient to

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1 meet the level of protection of human health and the
2 environment that an EPA regulation would achieve and
3 we would then propose in our proposed regulation to
4 have the EPA regulation not apply to the NRC
5 licensees. So, that's a process that we have managed
6 to get on the record and that's how we intend to
7 proceed.

8 (Slide) We're very concerned -- next
9 slide, please -- with both coordination inside the
10 government and with coordination with the diverse
11 interest groups with which we deal. I think you've
12 heard the list of the groups. Certainly we're trying
13 to work closely with the NRC, DOE, DOD, the states,
14 the Indian nations, environmental groups, private
15 citizens, the local governments and the
16 representatives of the various sectors of industry.
17 Anyone who's participated in your enhanced process
18 knows that there are some very diverse perspectives
19 out there. This is not a homogeneous group and we
20 have -- it is a challenge to forge something that
21 balances the interests of these various groups.

22 We have worked hard to develop a process
23 that deals with this participation. This includes
24 certainly foremost participation in the NRC process,
25 your enhanced participatory rulemaking process. We do

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1 think that that's been very successful. In addition
2 to this, we are establishing for purposes of general
3 policy review a subcommittee of EPA's National Council
4 on Environmental Policy and Technology, that's NACEP,
5 which is approved under FACA and is governed by that
6 process. This provides us some additional ongoing
7 input. We will have a series of public meetings. We
8 view these as addressing issues probably more germane
9 to some of the DOE sites. In other words, your
10 process, I think, has provided a lot of general
11 background on all sites, but with a focus on your
12 licensees. There are some additional issues
13 associated with military sites and the federal
14 facilities that will be useful for us to explore.

15 We have an Interagency Steering Committee
16 composed of office director level both from within our
17 agency and across the federal government. We had a
18 number of interagency work groups. As you all know,
19 the office directors meet, but the real work gets done
20 between those meetings and we started a number of work
21 groups. We've worked very closely with the NRC in
22 those sessions. Finally, we are working with the
23 Federal Radiation Protection Guidance Interagency
24 Committee to fulfill our general function to issue
25 federal guidance in this area. Now, this is a

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1 potentially distinct effort, but one that we see has
2 to be linked into this overall effort so that we again
3 have a coherent policy.

4 COMMISSIONER ROGERS: Excuse me. Just
5 before you move there, what's the relationship between
6 those last two activities, the steering committee and
7 the interagency committee?

8 MR. DURMAN: Let's see. You mean between
9 the guidance --

10 COMMISSIONER ROGERS: No, your last two
11 bullets on this slide, the Interagency Steering
12 Committee and the Federal Radiation Protection
13 Guidance Interagency Committee? How are they related?

14 MR. DURMAN: They may or may not have some
15 of the same people. The relation and distinctions is
16 as follows. The Interagency Steering Committee is
17 particularly focused on our rulemaking effort, the
18 standard developing phase of our activity. The
19 Federal Radiation Protection Guidance Committee is
20 working with us, it's been an ongoing group, to revise
21 the existing federal guidance. Now, it will not be
22 setting standards, it sets a context that resolves a
23 number of technical issues. I don't know if you're
24 aware that the existing federal guidance is fairly
25 obsolete. I think it was last revised in the '70s.

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1 It's in need of a revision. That process is well
2 underway. So, this group, this last group is focused
3 on the issue of updating, revising that guidance. We
4 see that that work will set the context for, but not
5 anything like a numerical limit for standards. So,
6 it's setting a context to make sure that we're not too
7 far out of sync between what exists on the record as
8 guidance and where the two agencies or a number of
9 federal agencies are with regard to standard setting.

10 COMMISSIONER ROGERS: Thank you.

11 MR. DURMAN: We have developed a white
12 paper which has been given to and reviewed by your
13 staff as well as the staff of some other agencies. We
14 highlight a number of issues in that paper. I think
15 that you'll find that there is a strong correlation
16 between the issues that we discuss there and the
17 importance and some of the things that you've heard
18 from Don in terms of issues that have arisen in the
19 participatory process. First and foremost,
20 determining an acceptable level of cleanup, acceptable
21 not only in terms of technology and feasibility, but,
22 particularly as we've learned from the participatory
23 process, acceptable to the public. That is indeed the
24 challenge and I think that the issue of public
25 participation and its role comes in exactly in the

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1 attempt to define an acceptable cleanup level.

2 Another issue, again quite intrinsic to
3 what's come out of the participatory process, the
4 future uses of these sites. It's become clear that a
5 simple assumption of unrestricted use is not what is
6 in a lot of people's minds when they think about
7 cleanup. It's clear that that has to be factored into
8 whatever process we move forward with.

9 Another issue, again a strong theme from
10 the participatory process, how to target individuals
11 and the populations to be served. I think we've
12 agreed that workers on the site working with
13 materials, involved in movement of the materials are
14 a major factor to be considered. I, at least, have
15 had sort of reaffirmed the particular sensitivities of
16 Indian tribes. It is interesting and informative to
17 hear the tribal representatives talk about basically
18 viewing themselves as living on the land forever and
19 hunting and fishing and gathering medicines and that's
20 sort of intrinsic to their religion and their lives to
21 have access. So, what are you saying when you talk
22 about you're going to leave this thing a mess? It
23 does pose -- it renews a sense of how complex the
24 issues can be.

25 Clearly for us protection of the

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1 environment is a consideration. Is it realized by
2 protection of the individuals? We are concerned about
3 the time frames. Are we talking this generation? How
4 do we deal with future generations? The narrower
5 technical issues, how many years people are exposed.
6 Broader issues, really this intergenerational.
7 Finally, the whole issue of the feasibility of a
8 particular strategy. Are the technologies available?
9 Are the costs reasonable? Are the tools available to
10 determine compliance?

11 We have a general schedule that we're
12 moving toward, again in recognizing fully where the
13 NRC stands on this. A number of things have taken
14 place. We have formed the interagency steering
15 committee. It has met. A number of the interagency
16 work groups have met, focusing on cost and modeling.
17 We have fashioned our internal work group. It has had
18 an initial meeting. We have developed an issues
19 paper. We are in the process of receiving comment on
20 that.

21 We hope to issue soon an advanced notice
22 of proposed rulemaking in the Federal Register. Now,
23 this is one of the things we're sort of working
24 with -- NRC has been helpful because I came to
25 understand that an ANPR to us means something quite

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1 different than an ANPR to you. So, I want to clarify
2 that to us an ANPR is a very preliminary step. It
3 does not indicate that we have a position. It does
4 not indicate that we have made decisions. It simply
5 says, "We feel a need to engage in rulemaking in this
6 area and here's some general questions we have and we
7 would like some comments." So, I understand that an
8 ANPR for you is a much more fully fleshed out document
9 and process. I just want you to be aware that this
10 is -- and for us it's a much earlier step in the
11 process.

12 We are hoping to have meetings of our
13 NACEP Committee this summer, public meetings in the
14 fall, and we have tentatively set late spring as a
15 date for a proposal. We recognize, however, that it's
16 important that we remain in sync with the NRC process
17 and that you are looking or considering a GEIS
18 process. We anticipate playing some role and we're
19 trying to work out what that role is with you in that
20 GEIS process. So, while we have made commitments to
21 members of Congress and other agencies for a late
22 spring activity, we recognize that there may be
23 circumstances that may cause that to change somewhat.

24 In conclusion, I'd like to say that
25 working in this enhanced process has been a genuine

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1 learning experience for all of us.

2 I think as Don has noted, there have been
3 issues expressed in ways that frankly none of us
4 really anticipated they would come out. I think this
5 issue of restricted use is certainly a prime example.
6 I think also that the process has belied the familiar
7 cliché about familiarity. I think in this case
8 familiarity has bred understanding both between
9 ourselves and the NRC and to some extent between the
10 federal government and the public. I do think that it
11 has worked at least in some small measure to break
12 down some of the barriers that normally exist.

13 I am encouraged by what has gone on. I am
14 looking forward to seeing the process through to its
15 conclusion.

16 Thank you.

17 CHAIRMAN SELIN: Thank you.

18 By the way, we've always been in favor of
19 informed consent. It's uninformed consent.

20 But on a more serious note, there are two
21 concerns that we had when we started this and I think
22 they've been allayed to some degree but I really would
23 like to emphasize both of them. The first is we have
24 a countable number of licensees. We're not passing
25 general standards. We've passing standards that

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1 affect the licensees. For a long time we held off on
2 trying to come up with specific standards and finally
3 we thought that health and safety on a broad basis
4 would be better served by moving forward with this
5 rulemaking so that people could get on with their
6 cleanup and not be afraid they'd spend a lot of money
7 and then find out that we changed the rules on them.
8 They are still concerned that after we come up with
9 the rulemaking and then that we get remediation plans
10 and actions go forth that somehow the EPA standard
11 would come out and say, "No, that's not quite good
12 enough. You have to do something else." Your remarks
13 are very reassuring. The Kostmayer testimony was
14 reassuring. The whole project has been reassuring.
15 But that is a major consideration. After all, the
16 objective is not to come out with a rulemaking or two
17 rulemakings. The objective is to get a lot of sites
18 cleaned up and the stability of environment is very
19 important to that question.

20 That leads me to my second observation,
21 which is sort of a question. I just don't see how you
22 can hit a schedule like anything like the one you've
23 put up. It would be disruptive to have two standards,
24 an NRC and an EPA standard come out about the same
25 time unless they were very closely coordinated. But

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1 I look at your schedule and I look at what we've
2 learned from rulemaking and we have a relatively
3 simple process. You're doing everything from Hanford
4 and Savannah River to some very simple sites, much
5 broader set of interests and more broader scope, many
6 more stakeholders than we have. Do you have backup
7 plans or partial plans or do you have some approach
8 that's not clear about hitting a schedule for next
9 fall?

10 MR. DURMAN: I think we would share your
11 view that this is an ambitious schedule. We have
12 tried to make it -- first of all, I've tried to
13 indicate that there is some flexibility. This is sort
14 of the stake that's in the ground today and that may
15 or may not be the stake that's in the ground a couple
16 of months from now. We have attempted to narrow as
17 much as we can the scope of this first rulemaking. In
18 other words, we recognize that there are a host of
19 issues that could be dealt with, norm, the whole waste
20 management questions, the whole recycle question that
21 we are not dealing with because we realize it's not
22 feasible to deal with them. So, we have attempted to
23 narrow as much as we can the scope of this initial
24 regulation.

25 But we also recognize the importance in

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1 staying in sync with your rulemaking and our goals are
2 yours, not to have sort of alternative and competing
3 and dueling standards on the books that impede
4 progress rather than facilitate progress.

5 So, this is where we stand today. We
6 think that we can provide a proposal that may be less
7 fully formed than some of our proposals, but we would
8 see then that there'd be more work done between
9 proposal and final than is sometimes the case.

10 CHAIRMAN SELIN: I see. Because the
11 memorandum of understanding and the working
12 relationship, the comments you made are really very
13 positive, but they make it clear that where we have a
14 regulatory framework in place, that EPA's got a lot of
15 other things to do and it would honor the framework
16 unless it were both inconsistent with your framework
17 and your framework would produce significant
18 improvements in overall risk. Clearly, that's not
19 going to happen here. We're going to have a good
20 solid framework in place and we would like to be able
21 to assure our licensees that if they comply with this
22 framework that both we and they will have better
23 things to do than to come back soon thereafter.
24 That's why I found your remarks so encouraging. In
25 fact, the whole process has been very encouraging.

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1 I think this might be a good place to stop
2 and go around on the Commission side for questions,
3 since you've collectively put a lot on the table.

4 MR. DURMAN: Sure.

5 CHAIRMAN SELIN: Commissioner Rogers?

6 COMMISSIONER ROGERS: Yes. Mr. Durman,
7 just one little question on the membership of your
8 subcommittees, the cost and modeling subcommittees.
9 Are all of your participating agencies members of each
10 of the subcommittees or is there some selectivity
11 there? I'm particularly interested in the modeling
12 subcommittee, for instance. I would assume that NRC
13 is a member of that, but --

14 MR. DURMAN: Yes.

15 COMMISSIONER ROGERS: Yes. Who are the
16 other members? Do you know?

17 MR. DURMAN: I might need a little help,
18 but I'm sure that it includes DOE, DOD and we have --
19 within EPA we've got to keep our Superfund folks on
20 board. We've got to keep our RCRA folks on board.
21 We've got our Office of Water guys. So, we have
22 enough different interests within our agency that we
23 need to make sure that they're involved. We've been
24 working, I think, quite closely. In fact, met
25 recently with the modeling group and I think we've had

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1 some side sessions with the NRC staff as well.

2 COMMISSIONER ROGERS: Fine. Thank you.

3 MR. DURMAN: I should note that the most
4 recent meeting of the staff on that was, in fact, just
5 two days ago, on Wednesday.

6 COMMISSIONER ROGERS: I see. All right.
7 Very good. Yes.

8 Just general comment, that I think that
9 the way this whole process has worked so far has been
10 really remarkable, I think. It attests to, I think,
11 some very creative thinking and flexibility on
12 everybody concerned, the NRC and the EPA. I think
13 most of the Commissioners have had an opportunity to
14 attend one of these workshops. I think it was really
15 an eye opener, certainly for me, to see how this was
16 working. My impression was that it was extremely
17 valuable. The dynamics were as described, that there
18 was a change in what might have been an opening
19 position by individuals or groups over the course of
20 the workshop from a kind of hard position, "This is
21 where we stand," to more of a problem solving
22 approach, "Well, there's a problem to be solved here
23 and how can we contribute to solving that problem and
24 still have our interests recognized?"

25 I saw a flexibility starting to develop in

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1 at least the one workshop I attended that I thought
2 was really remarkable. Also, some of the comments
3 afterwards with respect to the view of the government
4 by the participants was really quite different. They
5 had a little more hope for their interests being
6 recognized and their input being included.

7 I think another point that one could make
8 is not only was there an education of the participants
9 with respect to the government, but between their own
10 organizations. Certainly one of the best explanations
11 that I heard of the limitations of the government's
12 participation here came from one of the state
13 organizations on what the limitation of the federal
14 agencies were in what they could do and the extent to
15 which they must follow the guidance and statutes
16 provided by Congress. That was a new idea to some
17 people actually. There was a kind of feeling that
18 somehow or other each agency should just go and do
19 what it wants and if there's a problem go and solve
20 it. What are you being stopped by? Well, there are
21 lots of constraints on this process that were not
22 recognized.

23 So, I felt it really very encouraging and
24 I was delighted to see the active participation of EPA
25 and the way that the EPA folks and the NRC folks were

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1 working and discussing matters to me was extremely
2 encouraging.

3 I'd like to just comment on one matter
4 that was brought up here by Doctor Cool that came out
5 of the Philadelphia workshop and that was the role of
6 background. It does seem to me that an enormous
7 amount of thought should be given to this question of
8 what background really is and how we describe it and
9 how we use it. I've been a bit concerned to see from
10 time to time references in some NRC documents to
11 background as if it were a simple well known number.
12 There's background and then we measure from
13 background. You know, background today and background
14 tomorrow in the very same place are not exactly the
15 same number. Background ten feet away from where you
16 measure it at one point is not the same as it was in
17 a slightly different geographical location. There are
18 many, many questions about what background is that
19 have to be thought about in using background as some
20 kind of a base point. I really would call for some
21 very hard work on -- perhaps through the interagency
22 committee, but through some mechanism to really
23 produce a paper on what background is. Background is
24 not a simple matter.

25 One of the very interesting comments that

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1 was made by one of the participants at the
2 Philadelphia workshop which really took me by surprise
3 and yet in a way it was a very encouraging position
4 because this was one of the very concerned
5 environmental groups, was in connection with a
6 discussion of background, that background is
7 negotiable. Wow. That's an interesting concept.

8 So, it did seem to me, and the more I've
9 thought about it and looked at this matter, that I
10 think that the issue of background is not a simple one
11 at all, but it's fundamental to the approach that's
12 being taken by many groups here and it keeps coming up
13 time and time again. I would really call for a very
14 thoughtful paper on what background is, and I don't
15 mean just taking a meter and standing someplace and
16 measuring a number and saying, "That's background."
17 I think the temporal variations in background, the
18 differences from point to point and the errors that
19 are involved in making these measurements all are very
20 important in establishing whatever it is you're going
21 to mean by background if you're going to use that as
22 a standard reference for making additional
23 measurements, to see whether you've gotten back to
24 background. I don't know what it is at this point
25 frankly and I know a good deal about measuring

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1 radiation.

2 So, I would say that this is an issue that
3 in my mind really deserves a great deal of attention.
4 I don't know whether you agree with that or not,
5 Doctor Cool, but it seems to me that background is a
6 number -- is thought of as a number that everybody
7 understands and I don't understand it at all. I think
8 that if we're talking about it as some kind of a
9 fundamental base point to work from, that really has
10 to be elucidated. I think the notion that perhaps the
11 arrival at what background is is as much a process as
12 it is a physical entity. I'd really like to have some
13 thought given to that because it seems to me it's a
14 very important point.

15 Aside from that, I also want to compliment
16 the NRC people. I was really delighted to see the
17 way, the professional way that the whole business was
18 handled. Everyone did, I think, present to all
19 participants a very professional, very careful, well
20 prepared aspect and I think that the Keystone group
21 that provided assistance here did a superb job as
22 well. I think this whole activity has been a real
23 credit to the NRC and to the EPA for its
24 participation.

25 CHAIRMAN SELIN: Commissioner Curtiss?

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1 COMMISSIONER CURTISS: Yes. I don't have
2 any specific questions, but I do have just three very
3 brief observations. First, I would associate myself
4 with the remarks that Commissioner Rogers just made
5 about the participation of everyone in this process.
6 I thought the objectivity that everyone brought to the
7 table, the diplomacy that was alluded to, the
8 attention to detail that's obviously reflected in what
9 you have been doing over the past several months and
10 now have summarized for the Commission is highly
11 commendable and I think this process, as many of you
12 have said, really marks a significant milestone in how
13 we look at participating with the public, not just
14 from this Agency's perspective but from the federal
15 government's perspective in this area. So, I would
16 like to commend all of you for that work.

17 Secondly, I would just briefly associate
18 myself with the remarks that Chairman Selin made at
19 the conclusion of your presentations.

20 That really leads to my third comment. I
21 think I too am pleased to hear that the process that
22 we have in mind, and in particular the reaffirmation
23 of the general approach that we laid out in the
24 Kostmayer testimony seems to me to be an approach that
25 is not only one that we ought to strive to achieve

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1 here but is consistent with things that we're trying
2 to accomplish in other contexts and in particular the
3 memorandum of understanding that we have signed
4 between the two agencies.

5 In that regard, as I look at the
6 respective schedules and I think we both strive,
7 frankly, to implement what I think we feel are both
8 very aggressive schedules for both us that we have
9 laid out, it does seem to me that it might be
10 desirable in approaching this issue in the context of
11 the framework that we've got in the MOU and the
12 specific reaffirmation of the approach in the
13 Kostmayer testimony that we strive to marry those two
14 schedules in a manner where we as an Agency can
15 provide EPA the earliest opportunity to see what's
16 coming out of our regulatory package and in that
17 regard I would note that your goal of having something
18 over to EPA in April of '94 might fit quite nicely
19 with EPA's schedule in terms of a notice of proposed
20 rulemaking roughly in the springtime of '94.

21 The point here, it seems to me, is that we
22 need to provide EPA and obviously your participation
23 in this all along will, I think, facilitate doing this
24 in an efficient way. We need to provide EPA with as
25 early an indication as we can as to where you all are

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1 coming out. I should say the tough part of the job is
2 really ahead of us. As tough as this has been to date
3 and as commendable as your work has been, the tough
4 part will be ahead of us and providing that early
5 indication to EPA as to how you look at this body of
6 information, how you believe it ought to be formulated
7 into a regulatory package I think will in turn
8 facilitate an early opportunity for EPA, which I think
9 is essential given their schedule to frankly render
10 some determination along the lines of what we have in
11 the framework established in the MOU as to whether you
12 think we are on the mark, missing the mark or
13 overstanding the mark frankly. I would encourage you
14 as you move forward with this process and look at what
15 you have with the schedules to keep in mind the need
16 to do that at a very early stage in the process so
17 that if we're headed down the right path EPA can
18 devote its attention aggressively to the many other
19 facilities and activities that it has, confident that
20 the approach that we're taking will, in fact, provide
21 from the federal level a level of protection to the
22 public health and safety that we can all endorse and
23 move on with efficiently.

24 So, with that comment again, I'd like to
25 thank everybody here. I was particularly pleased to

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1 see EPA. Gene, your presentation I thought was quite
2 well presented and very comforting. So, I'd like to
3 thank all of you for the hard work that you've done
4 and commend you as you embark on the even tougher part
5 of this job.

6 Thank you.

7 CHAIRMAN SELIN: Commissioner Remick?

8 COMMISSIONER REMICK: First I have a
9 procedural question, Mr. Chairman. It's my impression
10 the staff hasn't completed their presentation.

11 CHAIRMAN SELIN: That is correct.

12 COMMISSIONER REMICK: And I have questions
13 on what they haven't said. But I do have a couple
14 questions on where we are now. Okay.

15 One, I certainly want to associate myself
16 with the comments Commissioner Rogers made on the
17 process and the pride I took in the way that the NRC
18 staff and the EPA people worked together and the
19 professional manner in which they did it. I also
20 associate myself fully with his comments on
21 background. At the San Francisco meeting where I
22 attended, it was extensively discussed and one of the
23 things that impressed me, and I forget which one of
24 the state agencies, if it was Oregon or California, at
25 the moment, but pointed out that if they had to be

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1 involved in determining whether a licensee had cleaned
2 up the background that they would spend so many of the
3 resources they would not have their limited resources
4 on what they considered more important issues of risk.
5 So, I associate with Commissioner Rogers on those
6 comments.

7 I have a question of Mr. Durman.

8 In any of the EPA programs, do you permit
9 other than unrestricted use of land?

10 MR. DURMAN: There have been a few
11 instances in some of the chemical programs where we
12 have essentially stipulated that it just wouldn't be
13 available for the general public. It's not a typical
14 outcome of what we do, but it's not unprecedented.

15 COMMISSIONER REMICK: In both RCRA and
16 Superfund?

17 MR. DURMAN: RCRA I'm less familiar with
18 and Superfund there are a number of examples.

19 COMMISSIONER REMICK: So the concept of
20 restricted use is not new to EPA?

21 MR. DURMAN: That's right.

22 COMMISSIONER REMICK: Okay. I'll hold off
23 on my other comments and questions until the staff is
24 finished.

25 COMMISSIONER de PLANQUE: I also got to

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1 attend one of the workshops, the one that was down
2 here in Washington, two half days, and I won't go into
3 all the detail that my colleagues have already gone
4 into because I agree with them 100 percent. I think
5 you've done an absolutely splendid job. I was totally
6 impressed with the way the NRC, EPA employees
7 conducted themselves at this workshop. I think it was
8 excellent, and Keystone too did an excellent job.

9 I'll add one anecdote. I'm particularly
10 struck by your conclusion of the need to involve the
11 public more in the process and I will tell you that I
12 happened to chair a workshop at NEA back in January in
13 Paris and this was -- the subject, as Don Cool knows
14 all about this, was radiation protection in the next
15 century. Probably, while there were many conclusions
16 out of this workshop having to do with radiation
17 protection, the key conclusion that came out was the
18 ever-increasing need to involve the public in all
19 stages of the process. So, indeed, this is an
20 internationally recognized conclusion that I think is
21 becoming more and more apparent.

22 I can't help but resist a few comments on
23 the background issue, having devoted a good deal of my
24 personal research career to the issue and coming from
25 an institution that spent 40 years on this issue.

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1 I have several boxes up in my office if
2 you want to take a look through probably a world class
3 collection on it. I think the staff is fairly
4 knowledgeable in this area, but if I can be of any
5 help, I'd be happy to because I'd like to get rid of
6 some of those boxes.

7 I guess I will stop at this point because
8 I also want to hear what's next.

9 CHAIRMAN SELIN: Mr. Cameron?

10 MR. CAMERON: I would like to just briefly
11 discuss the two issues that were highlighted in the
12 most recent SECY paper, the additional scoping
13 meetings and the early release of rulemaking criteria
14 for public review.

15 In terms of the scoping meetings, in the
16 original plan we submitted to the Commission on the
17 enhanced participatory rulemaking, we recommended one
18 public scoping meeting in Washington, D.C. When we
19 went out on the workshop trail at each workshop we had
20 strong requests from citizen groups for additional
21 scoping meetings. These requests were based on the
22 legal and policy importance of the EIS process to the
23 citizen groups and to the public and also on the fact
24 that additional scoping meetings would be consistent
25 with the spirit of the enhanced participatory

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1 rulemaking.

2 After examining the issue, the staff
3 believes that some additional scoping meetings would
4 be beneficial. Commissioner Remick is correct in his
5 comment before that there was a lot of the discussions
6 at the workshop that could legitimately fit under the
7 scoping label or that might be relevant to scoping.
8 But the staff believes that the additional scoping
9 meetings would provide us with a different type of
10 information than that we received in the workshop as
11 opposed to people stating positions or recommendations
12 on the rulemaking issues. We would be looking in the
13 scoping process for information on issues, additional
14 issues that should be addressed in the EIS, issues
15 that should be excluded, what level of detail should
16 the environmental impact statement go into, what
17 should be the relationship of the EIS on the
18 rulemaking to the NEPA review on individual sites. We
19 also believe that additional scoping meetings would
20 continue the public outreach objective behind the
21 enhanced participatory rulemaking.

22 Although there were public comment
23 sessions built into the workshops, the scoping meeting
24 would provide a much more expanded opportunity for
25 people to express their views on the issues. Many

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1 people who would do this would do it under a public
2 meeting format, but may not do it in writing. When we
3 looked at the cost, it was a cost benefit balance.
4 When we looked at the cost of doing the additional
5 scoping meetings, we thought that the cost would be
6 relatively small. We would recommend a very simple
7 format for the additional scoping meetings, a simple
8 public meeting format where people would give us their
9 comment. There would be NRC staff there to provide an
10 explanation of where this GEIS fits into the entire
11 process, but we don't think it would require a large
12 staff presence. We would not need an external
13 facilitator like we used in the workshops.

14 The scoping meetings would be basically a
15 one day format, an afternoon session and an evening
16 session in each location, and we also believe that
17 there would be a benefit in holding these additional
18 scoping meetings in locations where there are active
19 decommissioning projects that illustrate the issues
20 that need to be addressed in the rulemaking and that's
21 why we recommended the Oklahoma City site and the
22 Cleveland site as well as Washington, D.C., and San
23 Francisco. But, that's the basis of our
24 recommendation on the three additional scoping
25 meetings.

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1 The citizen group call was for having
2 scoping sessions at least in every city where we did
3 a workshop and the staff believes that some additional
4 scoping would be beneficial. Public scoping meetings
5 would be beneficial, but not to the extent suggested.

6 CHAIRMAN SELIN: Why don't you go on with
7 the last topic and then we'll ask you questions about
8 both?

9 MR. CAMERON: Don, do you want to hit
10 that?

11 DOCTOR COOL: Yes.

12 The other item that we heard repeated
13 often was the question, "When will we next see
14 something and what will be our opportunities to
15 participate as you go through this," given an
16 expectation that we created by calling it an "enhanced
17 process."

18 At the time we originally put together the
19 package and the plans we were in a transition, if you
20 will, with how we were interacting with the agreement
21 states. We instituted a couple years ago meetings at
22 the time of the agreement state meeting and the
23 Conference of Radiation Control Program Director where
24 we spend nearly a half a day reviewing projects that
25 are ongoing and getting a wide variety of input from

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1 those folks.

2 We are continuing to do that, but have now
3 also expanded that process recognizing the importance
4 of the agreements states in working with us and the
5 impact that our rules have where we are now typically
6 within the staff providing the states with a draft of
7 considerations and a potential rulemaking package for
8 them to actually look at and have an opportunity to
9 comment on, typically about 45 days. And our practice
10 with that has been, as I believe you are aware, to
11 provide the Commission an opportunity to see that
12 before we send it out and put a copy in the Public
13 Document Room.

14 Now that brought to the fore in our minds
15 the question of how we would proceed in this
16 rulemaking, because, if we followed the approach that
17 we had taken, it would be in the Public Document Room.
18 Some people would find out about it. Perhaps others
19 might not find out about it, and we have been rather
20 proactive up to this point in trying to involve all of
21 the interests.

22 And so, in the SECY paper we've provided
23 to you we've provided our recommendation that we go
24 ahead and be proactive at that stage as well, not only
25 sending it to the agreement states who are certainly

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1 one of the interests around the table, but also going
2 ahead and providing a copy of the draft of the
3 criteria and particularly, more importantly perhaps,
4 the draft of how we think we might have gotten to that
5 point and how we may have addressed some of the major
6 comment issues to the participants around the table,
7 not attempting to exclude anyone, but that serving as
8 a particular set we could send it to and from there it
9 could be fleshed-out farther and giving folks at least
10 a brief opportunity to look and see whether we've
11 characterized it properly, whether we've represented
12 their particular viewpoints in our consideration.

13 Obviously, I don't expect everyone to
14 write in and say, "Gee, you've done a wonderful job
15 and we think the rule is great." I know better than
16 to think that, but we hope that we would gain some
17 significant insights on whether we have in fact been
18 reasonable in our approach to it, whether we have
19 reasonably taken into account the different things
20 that have been said and be able to take that into
21 account and provide that to the Commission when we
22 then send up the proposed rule package.

23 So, that recommendation is that we go
24 ahead and be a little more proactive in that process
25 to make sure that everyone has an opportunity,

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1 although to limit the time to the 45 days or so that
2 we have at this point been using as our practice to
3 review for the agreement states.

4 CHAIRMAN SELIN: Do you have any final
5 wrap-up comments, Mr. Cameron?

6 MR. CAMERON: No, that's it.

7 CHAIRMAN SELIN: Commissioner Rogers?

8 COMMISSIONER ROGERS: Well, just I think
9 on this point, it does seem to me that it is
10 particularly important, and I think the Chairman
11 probably stressed it also in his opening remarks, that
12 somehow the participants have confidence that the
13 final outcome somehow or other their input was taken
14 into account.

15 Now it doesn't mean that it agrees with
16 it, but somehow that they don't get the feeling that
17 whatever they put into this process went into a black
18 hole and never came out again and that somehow that
19 they have a feeling that wherever they made a comment
20 that somehow that was among the comments that were
21 taken into account in arriving at a position. It
22 doesn't have to agree with their comment, but somehow
23 that they -- there's a traceability here, an issue I
24 think that may be very difficult but I think is worth
25 trying to do to give confidence to the participants

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1 that, yes -- the way you've done it with these 4,000
2 comments already in your database illustrates the fact
3 that you're doing it, but somehow it's got to be clear
4 to those at the end that that was in fact the process,
5 so I think it's an important aspect of credibility
6 when all is said and done, maybe not so easy to do.

7 CHAIRMAN SELIN: I did promise I'd get
8 back to you, Commissioner Remick.

9 COMMISSIONER REMICK: I want to say I
10 truly appreciate the interest expressed by the public
11 in having scoping meetings and so forth, but I did go
12 back and read Part 51 on scoping and I read down over
13 there and after I finished reading 51.28 and 51.29 I
14 thought, gee, I could rename that "enhanced
15 participatory rulemaking." Isn't that what we just
16 did? So, I thought, well, gee, and you'll eventually
17 see what my concerns are, I'm sympathetic to the
18 concept, the interest of the public in having you go
19 back and discuss it and in general I favor that.

20 But, if you'll recall, the Commission
21 picked decommissioning and decontamination criteria as
22 an extremely important topic that we needed to get
23 standards so we can move ahead with cleaning up sites.
24 With your proposed revised schedule, we will be
25 exceeding three years in developing a rule and to me

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1 that is very long for something that we considered
2 very important.

3 I would favor in general what you propose
4 if it did not change our original schedule. Now there
5 are some things that I'll just throw out that you
6 might consider, and that is the Commission is in the
7 process of considering revision of the ACNW charter
8 and when that comes out you might look at that from
9 the standpoint of your proposal of some of the things
10 that you would do with a propose.

11 Also, you have suggested a number of
12 processes that be done in series and I would suggest
13 you might look at whether those could be done in
14 parallel.

15 Now the bottom line of why this position.
16 I know a Commissioner who suggested that we move ahead
17 with decommissioning and decontamination criteria and
18 that we do it in a new process. That Commissioner has
19 supported the process all along. That Commissioner is
20 extremely interested in seeing the draft rule and
21 having a chance to comment on it. Your new schedule
22 would not permit that, so it's the reason why I
23 endorse what you're saying but I would like to see if
24 there isn't a way of still doing that and meeting the
25 original schedule which then fits in with Commissioner

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1 Curtiss' comments of trying to supply a draft rule to
2 EPA by next spring as originally intended so they can
3 see where the NRC is coming out. So, that's where I'm
4 coming from.

5 MR. CAMERON: Thank you. We'll consider
6 the way that we might be able to accomplish that.

7 I would note that the additional scoping
8 meetings are only part of the schedule extension
9 problem, that it's also the --

10 COMMISSIONER REMICK: I understand.

11 MR. CAMERON: -- agreement state review,
12 but we will look at that.

13 CHAIRMAN SELIN: I have a few comments.
14 They're completely consistent with Commissioner
15 Remick's, in addition to the fact that as a voting
16 member of the Commission I would like to see his
17 review of your work as a Commissioner not as a private
18 citizen.

19 There are some other points that further
20 support his position. I'm pretty sensitive to the
21 problems in writing a generic environmental impact
22 statement based on our experience with the license
23 renewal rule and how much more complicated it turned
24 out to be than we thought it would be at the
25 beginning. I'm also sensitive to the fact that a GEIS

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1 is an enormous time-saver and investments in such a
2 document at the beginning are well worthwhile at the
3 end.

4 But we've got to keep to the schedule. I
5 mean, we really have to keep to the schedule. We
6 cannot allow ourselves to be in a position where the
7 precedence is either we can do participatory
8 rulemaking or we can keep to a schedule but we can't
9 do both. This is supposed to, you know, be sort of
10 like Japanese consensus building. By talking to
11 people at the beginning you move more quickly
12 thereafter, not just slow things down.

13 I'm also concerned about the precedent
14 that whenever we do participatory rulemaking, which
15 will be saved for very high priority topics, will we
16 then have to go back and effectively reproduce the
17 process to do the scoping at the end?

18 But I think the paramountcy of the
19 schedule is really the overwhelming point, that we've
20 had, to put it bluntly, the tolerance and the
21 restraint of the Environmental Protection Agency on
22 the grounds that we're going to get done quickly and
23 what we'll do will end up being pathfinding for them
24 and for many other parties. And whether it's from the
25 point of view of priority or this complicated

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1 interaction or just to do what we promised that we
2 would do, we have an SDMP program going on. It would
3 be sort of silly to have a large number of those sites
4 already well underway towards approved decommissioning
5 before the rulemaking is done, et cetera.

6 So, there are many reasons in addition to
7 having some continuity among the voting members of the
8 Commission to keep the original schedule.

9 We're delighted with this, after this
10 grueling couple of weeks. It's nice to have a
11 Commission meeting where everybody feels better at the
12 end of it, but it's going to get -- I just want to
13 tell you it's going to get much harder when you go out
14 and say, "Here are the results."

15 All of this back-slapping and comity, C-O-
16 M-I-T-Y, it's going to turn out to have been very
17 useful, but it's -- I heard Doctor Cool say that he
18 understands that things won't be unanimous. I don't
19 believe you're necessarily prepared to see what's
20 going to happen at the next step and we need to keep
21 it up even when people are unhappy with what we're
22 doing, namely to continue to follow their comments,
23 not just at the early stage. It's going to be very
24 tough from here on in.

25 Mr. Cameron?

1 MR. CAMERON: Just one last closing
2 remark. I think I can speak for all of us who were
3 out on the trail that we really appreciate the
4 Commission support on this project. It was nice being
5 out there talking to people and being on the firing
6 line and knowing that the Commission was behind this
7 and behind us. It made it a lot easier, so, thank
8 you.

9 CHAIRMAN SELIN: Thank you very much.

10 (Whereupon, at 11:36 a.m., the above-
11 entitled matter was adjourned.)

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TITLE OF MEETING: BRIEFING ON STATUS OF ENHANCED PARTICIPATORY
RULEMAKING

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JUNE 4, 1993

were transcribed by me. I further certify that said transcription
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**ENHANCED PARTICIPATORY RULEMAKING
RADIOLOGICAL CRITERIA FOR DECOMMISSIONING
STATUS REPORT**

***BRIEFING FOR THE COMMISSION
JUNE 4, 1993***

***Francis X. Cameron
Office of the General Counsel***

***Donald A. Cool
Office of Nuclear Regulatory Research***

***Eugene Durman
Office of Radiation and Indoor Air
Environmental Protection Agency***

-
-
- **Status report on the enhanced participatory rulemaking**
 - ✓ ***Summary of the rulemaking process - Francis Cameron***
 - ✓ ***Workshop format and viewpoints - Donald Cool***
 - ✓ ***Environmental Protection Agency activities - Eugene Durman***
 - ✓ ***Generic Environmental Impact Statement scoping meetings - Francis Cameron***
 - ✓ ***Public comment on draft rulemaking criteria - Donald Cool***

- **Enhanced participatory rulemaking process**

- ✓ ***Seven workshops across the Nation***

- ✓ ***Broad spectrum of affected interests***

- ✓ ***Knowledgeable participants***

- ✓ ***Full participation by EPA***

- ✓ ***Public meeting before three workshops***

-
- **Workshops viewed very positively by the participants**
 - ✓ *Early opportunity for comment*
 - ✓ *Participation on an equal basis*
 - ✓ *Information sharing among participants*
 - ✓ *Valuable ideas for consideration*
 - ✓ *Valuable network for future NRC interactions*

 - **NRC criteria will be developed based on serious and thorough consideration of the workshop comments**

- **Workshop Format**

- ✓ ***Introductory Discussion***

- ▶ ***Advantages and Disadvantages of Generic Standards***

- ✓ ***Cross-cutting Issues***

- ▶ ***Protection of Human Health, Safety and the Environment***
- ▶ ***Waste Management Implications***
- ▶ ***Relationship to Existing Regulatory Frameworks***
- ▶ ***Technical Capabilities and Implementation Considerations***

- **Overview of Workshop Results**

- ✓ ***Discussions included full spectrum of opinions***

- ▶ ***Purpose was not consensus***

- ▶ ***Wide diversity of viewpoints***

- ✓ ***Discussions exhibited 2-day dynamic of participation***

- ▶ ***Early statements tended to focus upon general statements of positions important to participants***

- ▶ ***Later discussions tended to include exploration between participants of rationale, and included clarifications and moderations of the original positions***

- **Selected Viewpoints from Workshops**

- ✓ *Viewpoints presented are:*

- ▶ *Selected, preliminary*
- ▶ *Expressed by some, but not all participants*
- ▶ *Represent some of the range of discussion on various issues*

- **Selected Viewpoints from Workshops**

- ✓ *Unrestricted Use as ultimate goal questioned*

- ✓ *Public, including local government, citizen groups, and others should participate at each phase of both rulemaking and implementation*

- ✓ *Ultimate goal of decommissioning should be the return to background at the site*

- **Selected Viewpoints from Workshops**

- ✓ *Limits are important to ensure compliance, but some perceived this approach could allow too much health risk*
- ✓ *Goals may be appropriate depending on the level of risk, but it was noted that they are less desirable from an enforcement standpoint*
- ✓ *Best effort types of approaches were not desirable from a risk standpoint and from a finality standpoint*
- ✓ *Background seen by many participants as the ultimate objective, but it may be difficult to measure and achieve and may not be justifiable from a risk or cost standpoint*

- **Selected Viewpoints from Workshops**

- ✓ *Individuals from different perspectives indicated that flexibility should be provided in the regulations to adjust for site-specific conditions*
- ✓ *ALARA approaches are generally supported by industry and professional societies, but distrusted by citizens and local government representatives for a variety of reasons*
- ✓ *Disparate viewpoints on role that costs should play in selection of criteria*

- **Selected Viewpoints from Workshops**

- ✓ *Many participants expressed the view that the ability to demonstrate compliance with the standards was of great importance*
- ✓ *Diverse participants suggested that all types of risk be included in assessments, such as occupational risk, public risk, non-radiological risks, and transportation risks*
- ✓ *Diverse groups of participants suggested that waste disposal issues are closely tied to decommissioning*

- **Next Steps**

- ✓ *Workshop comment analysis*
- ✓ *Generic Environmental Impact Statement*
- ✓ *Technical Underpinnings*
 - ▶ *Modeling (NUREG/CR-5512)*
 - ▶ *Site Characterization (BTP)*
 - ▶ *Survey Procedures (NUREG/CR-5849)*
 - ▶ *Instrumentation capabilities*
- ✓ *Regulatory Analysis*
- ✓ *Statement of Considerations and Rule*

Development of EPA Radiation Site Cleanup Regulations



Introduction

- **EPA is developing two regulations**
 - **Cleanup**
 - **Waste management**
 - **Disposal**
 - **Recycling and reuse**

Cleanup Regulations

Goals:

- Protect human health and the environment**
- Facilitate cleanup**

Regulations will apply to all sites

- Superfund sites**
- Federal Facility sites (e.g., DOE, DOD)**
- NRC and Agreement State licensees**

Public Participation and Interagency Coordination

- Coordination with all interested parties,
including:**
 - Other Federal agencies**
 - States**
 - Indian Nations**
 - Local governments**
 - Environmental groups**
 - Citizen and industry groups**

Public Participation and Interagency Coordination (cont'd)

- ❑ Process for ensuring effective public participation and interagency coordination**
 - NRC Decommissioning Standards public workshops**
 - NACEPT subcommittee**
 - Public meetings**
 - Interagency Steering Committee and Workgroups**
 - Federal Radiation Protection Guidance Interagency Committee**

Cleanup Regulation Issues

- Acceptable cleanup level**
- Land use**
- Individuals/populations**
- Protection of the environment**
- Time frame**
- Technological feasibility**

Radiation Site Cleanup Regulations - Rulemaking Milestones

Interagency Steering Committee Meeting	March 3, 1993
Interagency Workgroup Meeting	April 1, 1993
Interagency Cost Subcommittee Meeting	April 21, 1993
Interagency Modeling Subcommittee Meeting	May 10, 1993
EPA Workgroup Meeting	May 12, 1993
Receive/review comments on Issue Paper	June 15, 1993
Advance Notice of Proposed Rulemaking Published in Federal Register	July 1993
NACEPT Meetings	Summer/Fall 1993
Public Meetings	Fall 1993
Notice of Proposed Rulemaking Published in Federal Register	Late Spring 1994



May 28, 1993

POLICY ISSUE

SECY-93-152

FOR: The Commissioners
(NEGATIVE CONSENT)

FROM: William C. Parler
General Counsel

James M. Taylor
Executive Director for Operations

SUBJECT: ENHANCED PARTICIPATORY RULEMAKING

PURPOSE:

To obtain Commission approval of a recommendation to increase the number of public scoping meetings on the Generic Environmental Impact Statement (GEIS) for the enhanced participatory rulemaking, and to inform the Commission of the staff's intent to inform the workshop participants and the public of the availability of the draft criteria for decommissioning that is submitted to the Agreement States for review.

SUMMARY:

The staff plan in SECY-92-249 for conducting the enhanced participatory rulemaking to establish the radiological criteria for decommissioning provided for one public meeting in Washington, D.C., on the scoping process for the GEIS. Subsequent to the Commission's approval of the plan, numerous requests were received from the citizen groups participating in the rulemaking workshops to expand the number of public scoping meetings and to extend the length of the public comment period for the rulemaking issues paper beyond May 28, 1993. After considering the potential benefits of expanding the number of scoping meetings and the comment period, as well as the effect on the rulemaking schedule and agency resources, the staff recommends that three additional scoping meetings be held and that the comment period for the workshops be extended to coincide with the completion of the GEIS scoping. The staff also proposes to make available the staff considerations of workshop comments and draft radiological criteria for decommissioning to obtain early reactions from workshop participants and members of

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Donald A. Cool, RES
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NOTE: TO BE MADE PUBLICLY
AVAILABLE AT COMMISSION
MEETING ON JUNE 4, 1993

the public at the time the draft is provided to the Agreement States for review, i.e., before it is submitted to the Commission for review.

BACKGROUND:

In SECY-93-114, the staff provided the Commission with a status report on the enhanced participatory rulemaking to establish radiological criteria for decommissioning. In that paper the staff informed the Commission that the staff had received numerous requests during the rulemaking workshops for additional public scoping meetings on the GEIS for the rulemaking. Participants also requested an extension of the comment period on the rulemaking issues paper beyond May 28, 1993. The staff committed to provide a recommendation to the Commission on the GEIS scoping issue in a supplemental paper submitted in preparation for the June 4, 1993 Commission briefing on the enhanced participatory rulemaking. An extension of the public comment period to June 28, 1993 for the rulemaking issues was published in the Federal Register on May 25, 1993 (58 FR 29998).

DISCUSSION:

GEIS Scoping Meetings

The staff recently completed seven regional workshops on the issues related to the rulemaking on the radiological criteria for decommissioning. Although these workshops generated comments that are relevant to the preparation of the GEIS on the rulemaking, the workshops were not intended to be a substitute for the traditional scoping process that is conducted for an environmental impact statement on a proposed Commission action. Under the Commission's regulations in 10 CFR 51.26, the NRC is required to conduct a scoping process to determine the issues, methodologies, and extent of detail that should be addressed in any environmental impact statement (EIS). Public meetings related to the scoping process are discretionary under the Commission's rules.

The staff plan in SECY-92-249 for conducting the enhanced participatory rulemaking provided for one public meeting in Washington, D.C., on the scoping process for the GEIS. However, at each workshop, broad support was expressed by citizen groups and the public generally for additional scoping meetings. In fact, several of these commenters recommended that a scoping meeting be held in every location where a workshop had been conducted. Other participants, while favoring an increased number of scoping meetings, requested that the Commission hold the meetings in locations that were closer to the communities affected by decommissioning actions. Participants also expressed the view that conducting a single scoping meeting on the rulemaking would be inconsistent with the "enhanced participatory" nature of the rulemaking. This support for additional meetings was primarily

based on the policy and legal importance of the EIS process under the National Environmental Policy Act and the resulting need to ensure broad public participation in this process.

Although the NRC typically holds public scoping meetings on EIS's associated with individual facilities, the Commission's practice has been uneven in regard to public scoping meetings on EIS's associated with rulemakings. For example, the Commission conducted the scoping process for the development of its low level waste disposal regulations in 10 CFR Part 61 solely through written comments (43 FR 49811; October 25, 1978). Although several workshops were held in support of the low-level waste rulemaking, they did not focus on the scoping aspects of the GEIS under NEPA. In regard to the Commission's 1988 rule on the general requirements for decommissioning, no public scoping meetings were held per se. However, three state workshops and one public workshop were held to obtain comments on several issues, including the preliminary EIS issues. Similarly, no meetings were designated as public scoping meetings on the license renewal rulemaking (55 FR 29964; July 23, 1990). However, the Commission did conduct a public meeting on this rulemaking, which requested comment on, among other issues, alternatives for addressing NEPA issues (54 FR 41980; October 13, 1989).

The staff believes that the additional scoping meetings would aid in the gathering of comprehensive information on the scope of the GEIS. It would also maintain the pattern of broad public participation that the Commission intended for the enhanced participatory rulemaking. The focus of the GEIS scoping process will be different than the focus of the enhanced participatory rulemaking workshops and, as a result, the scoping meetings will not duplicate the Commission's efforts in the workshops. Whereas the workshops focussed primarily on issues associated with the substantive outcome of the rulemaking, the scoping meetings will focus on what issues should be addressed in the GEIS, what methodologies should be used to address these issues, what level of detail should the GEIS contain, and how should the GEIS relate to the NEPA review on site-specific decommissioning actions.

A simple and straightforward process would be used for conducting the scoping meetings. This meeting format would begin with a brief overview of the workshops which have already been conducted, and the purpose and questions to be addressed in the GEIS scoping. The remainder of the time would be allocated for individuals to express their views on the scoping issues. The staff role throughout the meeting would be to explain the objectives of the rulemaking and the nature of the GEIS process, as well as to answer any questions that are relevant to the process. The staff would ask questions of clarification when necessary, but would not be in the mode of discussion with meeting participants. The meetings would be scheduled for one day in each of the four selected locations and would consist of two approximately 3 to 4 hour sessions, one in the

afternoon and one in the evening. The inclusion of an evening session is to facilitate participation of individuals who might otherwise not be able to attend due to job commitments, etc. This approach would respond to the many requests in previous meetings with members of the public. Each session would be transcribed. The meetings would not require an external facilitator. The number of NRC staff actively involved in the meeting would be on the order of two to three. The simplicity of the format is designed to minimize the NRC resources necessary to conduct these meetings, and to maximize the opportunity for public input.

Accordingly, the staff recommends that three scoping meetings be held in addition to the meeting originally planned for Washington, D.C. The staff recommends that the additional meetings be held in San Francisco, California; Oklahoma City, Oklahoma; and Cleveland, Ohio. These locations, along with the Washington, D.C. meeting, will provide coverage for the entire country. Several of the workshop recommendations on the need for additional scoping meetings emphasized the benefit of holding a scoping meeting in the vicinity of a major nuclear facility that was in the process of decommissioning. The staff agrees that a scoping meeting near a facility that reflects the major issues that need to be addressed in the enhanced participatory rulemaking would bring a useful perspective to the scoping process. The staff selected the meeting locations in Oklahoma City and Cleveland because of their proximity to active decommissioning projects. There are several SDMP sites located near both cities. In addition, the Sequoyah Fuels Facility in Gore, Oklahoma, is another large decommissioning project near Oklahoma City that is likely to raise a number of environmental issues (e.g., soil and groundwater contamination) associated with decommissioning. San Francisco and Washington, D.C. were selected to provide appropriate geographical coverage, even though there are no SDMP sites near these locations.

Each meeting will cost approximately \$2000 to cover the rental of the meeting location, audiovisual equipment, and transcription. An additional \$3000 will be necessary for each workshop outside of Washington, D.C., to cover travel expenses for the NRC staff. The staff proposes to hold the scoping meetings on an expedited schedule between July 15, 1993 and July 30, 1993. This schedule will allow the staff sufficient time to make the logistical arrangements for the scoping meetings and to provide sufficient notice of the meetings in the Federal Register and in the local media. A minimum of 30 days notice should be provided prior to the first GEIS scoping meeting. The staff will also provide notice about the scoping meetings to the participants in the rulemaking workshops and other established networks and place a copy of the notice on the electronic bulletin board established for this rulemaking.

The additional meetings will have a small impact on the rulemaking schedule. The time necessary to plan and hold the additional

meetings and to analyze the additional comments from those meetings will add approximately six weeks to the schedule. A revised schedule for the rulemaking has been provided in Attachment 1.

A number of participants and observers at the rulemaking workshops also requested the NRC to extend the public comment period on the rulemaking issues paper beyond the May 28, 1993, deadline. This deadline was established in the *Federal Register* notice that announced the workshop process and availability of the rulemaking issues paper. To date, despite the six months available for members of the public to review and comment on the issues paper, very few comments have been provided to the NRC other than through the rulemaking workshops. In addition, a number of citizens groups and professional society representatives claimed that additional time would allow development of integrated comments based on the discussions at the rulemaking workshops.

The staff believes that the comment period should be extended. An initial extension to June 28, 1993 was published in the Federal Register on May 25, 1993 (58 FR 29998). If the number of scoping meetings on the GEIS is increased to four and the rulemaking schedule extended until the end of July 1993, the staff would propose to honor the request for additional review of the issues paper by further extending the period until July 30, 1993. If NRC only conducts one scoping meeting in Washington, D.C., then no additional time would be granted.

If the Commission approves the additional scoping meetings and the extension of the public comment period, the staff will prepare and submit a Notice to the Federal Register for publication. The Notice will state the Commission's intent to prepare a GEIS and address the schedule for the scoping meetings and the submission of written comments. It will also address other issues related to the scoping process, such as cooperating agencies in the preparation of the GEIS.

The staff intends to request that the Environmental Protection Agency be a cooperating agency. EPA has been an active participant in the rulemaking workshops, and is proceeding with rulemaking and Federal Guidance development in parallel with the NRC rulemaking. In addition, EPA possesses the statutory authority and special expertise which is considered necessary and appropriate for inclusion as a cooperating agency. Furthermore, inclusion of the EPA as a cooperating agency will be another step in ensuring the development of consistent standards for decommissioning.

Release of the Draft Criteria

Ordinarily, public availability and review of a proposed rule prepared by the staff does not occur until after the Commission has reviewed and approved the draft for publication as a proposed rule in the *Federal Register*. However, because of the special

relationship that the Commission has with the Agreement States, the staff's procedures now provide for review by the Agreement States of the draft proposed rule before it is submitted to the Commission for review. As a matter of practice, the draft has also been placed in the Public Document Room (PDR) at the time that it is provided to the Agreement States. A time period of 45 days is generally allowed for Agreement State comments. It is the availability of the draft proposed rule for Agreement State review that raises the issue of whether the Commission should take more affirmative measures to make the staff considerations of workshop comments and draft radiological criteria for decommissioning available to workshop participants and the public.

The staff believes that it would be appropriate for the Commission to take affirmative measures to make available the staff considerations and draft radiological criteria for information and comment by workshop participants and the public, particularly in view of the nature of the enhanced participatory process. The involvement of the wide spectrum of interested parties involved in the workshops should provide the staff with some early reactions on how effectively the staff has evaluated and considered the workshop comments in developing the draft criteria. This early review would also provide useful information about the views of the Agreement States and other interest groups for the Commission's consideration at the time it reviews the draft proposed rule.

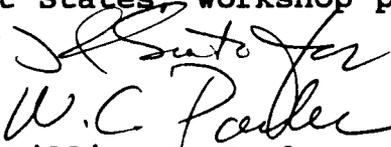
Accordingly, the staff intends to provide each workshop participant with a copy of the staff draft and to indicate that we would be receptive to any participant reactions to the draft criteria. The draft would also be placed on the electronic bulletin board to increase its availability. The time allowed for input would be limited to the 45 days which is presently being provided for Agreement State review of staff proposals. It should be noted that the rulemaking schedule provided in SECY-92-249 did not account for the time period needed for Agreement State review because the current procedure was not in place at the time the schedule was developed. However, the staff believes that this additional time will be necessary irrespective of whether other interested parties are invited to examine the staff's proposals. The necessary additional time has been reflected in the revised schedule provided in Enclosure 1.

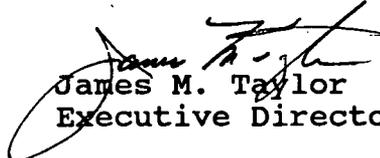
RECOMMENDATIONS:

Unless otherwise directed by the Commission, the staff plans the following actions:

1. Conduct of four GEIS scoping meetings in Washington D.C., San Francisco, California; Oklahoma City, Oklahoma; and Cleveland, Ohio; and

2. Proceed with a new rulemaking schedule as presented in Enclosure 1, including extension of the public comment period on the rulemaking issues paper, scoping of the GEIS, and release of staff considerations and draft radiological criteria to the Agreement States, workshop participants and other interested parties.


William C. Parler
General Counsel


James M. Taylor
Executive Director for Operations

Attachments:

1. Revised Rulemaking Schedule
2. Original Rulemaking Schedule

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Monday, June 14, 1993, that the Commission, by negative consent, assents to the action proposed in this paper.

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ENCLOSURE 1 - RULEMAKING SCHEDULE

COMPLETE PUBLIC WORKSHOPS ON RULE	- 5/7/93 C
NOTICE OF INTENT TO PREPARE GEIS; REQUEST FOR COMMENTS ON SCOPE OF GEIS	- 6/15/93
LETTER OF INVITATION TO EPA REGARDING COOPERATION ON THE GEIS	- 6/15/93
COMPLETE FOUR PUBLIC MEETINGS ON GEIS SCOPING	- 7/30/93
END WRITTEN COMMENT PERIOD ON GEIS SCOPING	- 8/15/93
DRAFT REGULATORY ANALYSIS & GEIS COMPLETE	- 11/93
DRAFT CRITERIA TO AGREEMENT STATES, WORKSHOP PARTICIPANTS, AND OTHER INTERESTED GROUPS	- 1/94
DRAFT REGULATORY PACKAGE TO OFFICE CONCURRENCE (INCLUDES DRAFT REGULATORY GUIDE ON DEMONSTRATING COMPLIANCE WITH THE REGULATION)	- 4/94
DRAFT REGULATORY PACKAGE TO EPA	- 4/94
DRAFT REGULATORY PACKAGE TO ACNW AND CRGR	- 5/94
DRAFT REGULATORY PACKAGE TO EDO	- 7/94
DRAFT REGULATORY PACKAGE TO COMMISSION	- 8/94
PUBLISH DRAFT RULE	- 9/94
PUBLISH FINAL RULE	- 9/95

ATTACHMENT 2 - ORIGINAL RULEMAKING SCHEDULE

ENCLOSURE H - RULEMAKING SCHEDULE

WORKSHOPS AND COMMENT PERIOD COMPLETE -- 5/28/93

NOTICE OF INTENT TO PREPARE GENERIC ENVIRONMENTAL IMPACT STATEMENT (GEIS); REQUEST FOR COMMENTS ON SCOPE OF GEIS -- 6/4/93

PUBLIC SCOPING MEETING ON GEIS -- 6/30/93

SCOPING PROCESS COMPLETE -- 7/15/93

NRC SUMMARY OF WORKSHOP COMMENTS COMPLETE -- 7/1/93

REGULATORY ANALYSIS COMPLETE -- 10/93

DRAFT GEIS COMPLETE -- 10/93

DRAFT REGULATORY GUIDE ON DEMONSTRATING COMPLIANCE WITH THE REGULATION COMPLETE -- 10/93

STAFF REVIEW AND CONCURRENCE ON DRAFT PROPOSED RULE AND SUPPORTING DOCUMENTS -- 11/93

STAFF REVIEW AND CONCURRENCE COMPLETE -- 2/94

DRAFT PROPOSED RULE AND SUPPORTING DOCUMENTS TO EDO -- 3/94

DRAFT PROPOSED RULE AND SUPPORTING DOCUMENTS TO COMMISSION -- 4/94

PROPOSED RULE AND SUPPORTING DOCUMENTS PUBLISHED FOR PUBLIC COMMENT -- 5/94

PUBLIC COMMENT PERIOD ENDS -- 7/94

FINAL RULE AND SUPPORTING DOCUMENTS -- 5/95