

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: BRIEFING BY ORGANIZATION OF AGREEMENT
STATES AND STATUS OF IMPEP PROGRAM
PUBLIC MEETING

Location: Rockville, Maryland

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1250 I St., N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 BRIEFING BY ORGANIZATION OF AGREEMENT STATES
5 AND STATUS OF IMPEP PROGRAM

6 ***

7 PUBLIC MEETING

8 ***

9
10 Nuclear Regulatory Commission
11 Commission Hearing Room
12 11555 Rockville Pike
13 Rockville, Maryland

14
15 Thursday, March 31, 1998
16

17 The Commission met in open session, pursuant to
18 notice, at 3:04 p.m., the Honorable SHIRLEY A. JACKSON,
19 Chairman of the Commission, presiding.
20

21 COMMISSIONERS PRESENT:

22 SHIRLEY A. JACKSON, Chairman of the Commission
23 GRETA J. DICUS, Member of the Commission
24 NILS J. DIAZ, Member of the Commission
25 EDWARD McGAFFIGAN, JR., Member of the Commission

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1 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:
2 ROBERT QUILLIN, CO, OAS Past-Chair
3 KAREN D. CYR, General Counsel
4 ROLAND FLETCHER, MD, OAS Chair
5 STANLEY MARSHALL, NV, OAS Chief-Elect
6 RICHARD RATLIFF, TX, OAS Secretary
7 HUGH THOMPSON, DEDR
8 CARL PAPERIELLO, Director, NMSS
9 DONALD COOL, Director, IMNS/NMSS
10 RICHARD BANGART, Director, OSP
11 PAUL LOHAUS, Deputy Director, OSP
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P R O C E E D I N G S

[3:04 p.m.]

1
2
3 CHAIRMAN JACKSON: Good afternoon, ladies and
4 gentlemen. This afternoon, I would like to welcome
5 representatives from the Executive Committee of the
6 Organization of Agreement States, Mr. Fletcher, Mr. Marshall
7 and Mr. Ratliff and -- I'm told by telephone -- Mr. Quillin.
8 Is Mr. Quillin on the line? Okay.

9 The OAS representatives will be briefing the
10 Commission on some of the more significant issues
11 confronting the Agreement States today. As always, the
12 Commission looks forward to hearing your view on the status
13 of the Agreement State program.

14 Following the briefing, the NRC staff -- briefing
15 by you -- the NRC staff will brief the Commission on the
16 status of the integrated materials performance evaluation
17 program, or IMPEP, and I thank all of you for the time and
18 for taking the time to address the Commission today.

19 So unless my colleagues have any comments they
20 would like to make, Mr. Fletcher, you're going to be the
21 lead off. Thank you.

22 DR. FLETCHER: Chairman Jackson, Commissioners,
23 NRC staff members, and our fellow radiation control
24 Agreement State directors who hopefully are connected by
25 telephone in I understand about 20 states, I'm very pleased

1 this afternoon to have the opportunity once again to speak
2 to the Commission about various areas and perspectives that
3 are of concern, issues with the Agreement States, and I must
4 say I come here at somewhat of a sacrifice, personal
5 sacrifice. I mean, today is opening day and I am a native
6 Baltimorean.

7 [Laughter.]

8 DR. FLETCHER: And it is three p.m., so Camden
9 Yards is filled.

10 CHAIRMAN JACKSON: Now, Mr. Fletcher, the only
11 thing I would say is that the magnitude of your sacrifice is
12 only outweighed by the magnitude of all of our sacrifices.

13 DR. FLETCHER: Right. Understood.

14 I would like to outline our agenda. I will be
15 speaking on improved cooperation and communication,
16 information sharing and professional courtesy between
17 regulatory parties. Bob Quillin by telephone will be
18 speaking on regulation requirements of DOE contractors and
19 subcontractor activities. Stan Marshall, who is the
20 chair-elect, will be speaking on the role of states
21 generally and Agreement States specifically in the oversight
22 of DOE. Richard Ratliff, our secretary, will be speaking on
23 Agreement State responsibilities for potentially
24 contaminated sites formerly licensed by the NRC/AEC.

25 I will then come back with some additional brief

1 topics and we will close with some statements about our
2 upcoming Agreement State meeting.

3 I begin by discussing a topic that has surfaced at
4 our Agreement State meeting, the one in California. It has
5 been discussed off and on at various occasions, and it is an
6 area of concern to many states, and in reviewing a working
7 draft that had been prepared responding to this issue, there
8 still seems to be some lack of a common ground between the
9 issues regarding the information sharing.

10 One of the things that we would like to emphasize
11 is that as Agreement States, we are operating within a state
12 unit that involves political leaders, community leaders, our
13 own staff management, and we are operating with individuals
14 who have a wealth of understanding and a wealth of
15 experience in dealing throughout that unit, and in
16 comparison, normally when information is either solicited or
17 given to the states, it is almost as though the state can't
18 be trusted with that information, and I think, on the other
19 side of the coin, it is in the best interest of all those
20 involved, particularly during investigations that might
21 involve licensees who have already established the history
22 in that state, that the state, the Agreement State be
23 involved as early as possible, and as frequently as
24 possible.

25 We conduct investigations of our own. Our staffs

1 are well versed in how to control information. We are
2 trained in most cases and informed by our own legal bodies
3 on how to maintain a certain amount of investigatory
4 integrity, and I think that for both of us to be regulatory
5 partners, we need to operate on the same legal footing, on
6 the same trust footing, if you will, when dealing with
7 touchy issues.

8 We recognize that there are going to be occasions
9 when certain bits of information might need to be withheld,
10 but that does not, to me, mean that a majority of times,
11 this needs to occur.

12 CHAIRMAN JACKSON: Now, are you aware of the fact
13 that when there are ongoing -- when investigations are
14 ongoing -- and general counsel can, you know, correct me
15 here -- that, in fact, even internal to NRC, that the
16 information is closely held until that investigation is
17 completed?

18 DR. FLETCHER: I realize that there is some
19 information that's closely held. I guess what I'm alluding
20 to is that sometimes we have information that would aid your
21 investigation, but unless we are made aware of the kinds of
22 information you need or the perspective you're looking from,
23 we're not at liberty or even prepared to give you that
24 information.

25 CHAIRMAN JACKSON: I think it may be -- I mean,

1 have you had discussions with our Office of Investigations
2 at all about the process?

3 DR. FLETCHER: Not directly, no.

4 CHAIRMAN JACKSON: I think I would recommend, you
5 know, that, in fact, that's something that you might want to
6 do so you can understand, you know, better the parameters
7 within which we operate.

8 Are you aware of any specific instances where a
9 lack of communication on investigative activities could have
10 or did, in fact, jeopardize public health and safety?

11 DR. FLETCHER: Not that it necessarily jeopardized
12 public health and safety, but I'm concerned there have been
13 instances where Agreement State staffs were not informed and
14 the information perhaps became -- you know, was shared with
15 the media, and therefore other members of the state became
16 aware of some information before the agreement staff. I was
17 going to speak of some specific -- there was a specific
18 incident in Washington that we followed the procedure of
19 reporting the incident of a stolen gauge to the NRC, and
20 while we were in the process -- while the state program
21 persons were in the process of following through, first of
22 all, various levels of the Nuclear Regulatory Commission
23 itself, the regional and the national level, started
24 bombarding with questions, so that time had been taken to
25 address the questions as though the Radiation Control

1 Program was actually receiving the report rather than being
2 the initiator of the report.

3 I guess what has happened is communications are
4 oftentimes disrupted in some way so that the Agreement State
5 staffs are not treated as though they are part of the
6 solution, and they can be. The point I'm emphasizing is
7 that we do have a great deal of experience on these staffs
8 that I think can be better utilized.

9 CHAIRMAN JACKSON: Again, I think, you know,
10 without preempting the rest of your discussion, it seems to
11 me that a necessary step is for you to have a discussion
12 with our Office of Investigation, because they're not
13 general employees in the sense that you mean. They are our
14 employees. But, you know, they are actual special agents.
15 So I think you need to have a talk with them.

16 DR. FLETCHER: If I may, by the same token, we are
17 often involved at the state level in investigations where
18 our own attorney general's office --

19 CHAIRMAN JACKSON: I understand.

20 DR. FLETCHER: -- controls --

21 CHAIRMAN JACKSON: But in order for us to -- you
22 need to understand a little more about what happens here in
23 terms of investigative activities, and our own Office of
24 Investigations needs to understand, you know, who gets
25 involved at the state level, and I think therein lies the

1 beginning of trying to come around to better communications
2 in this regard. Does that sound --

3 DR. FLETCHER: We can pursue that. Thank you.

4 In another related area, we are very concerned in
5 many instances -- I alluded to it in part on investigations,
6 but there's actually more in the area of inspections. When
7 we notify the Nuclear Regulatory Commission, I know that
8 procedurally, the information becomes a part of a PN and is
9 made available to anyone who would choose to review it.
10 Many states, depending upon their own way of doing things,
11 don't automatically and initially provide information on an
12 ongoing inspection, investigation, enforcement activity
13 immediately to the media until the information is fully
14 investigated and so that there is full understanding,
15 because confusion is a very difficult thing to correct and
16 we try to preclude confusion by having as many of the facts
17 as possible before we make any presentation. And there have
18 been instances where the information has almost gotten a
19 life of its own and it's very difficult to bring it back and
20 to control it.

21 I would like to address in some way a way that we
22 can keep the NRC informed about what's going on without the
23 risk of having our own procedures inside a state disrupted
24 or having someone in our own either governmental community
25 or chain of command get only part of the information because

1 it's not all contained in those reports.

2 The other area is the area where whether or not
3 communications have a significant impact on public health
4 and safety, and once again, we have a vested interest in
5 maintaining the public health and safety in our communities.
6 I mean, these are -- each state is a community in and of
7 itself, each state is a political unit, each state has
8 certain characteristics and nuances, et cetera, that the
9 state radiation control people in those organizations are
10 very familiar with. We deal with all kinds of public health
11 and safety issues.

12 All we ask is that when instances of public health
13 and safety are concerned, that we do deal with this jointly,
14 we deal with it as a unit, as a partnership. It really
15 hurts us when it appears as though the federal agency had to
16 come in and tell us how to do it, and sometimes that
17 impression is given and we would just ask that to the extent
18 possible, that we work together in dealing with instances
19 where this occurs.

20 We have experienced staffs in all of these states.
21 You know, even those who have just become Agreement States,
22 they have still had years of experience in dealing with NARM
23 issues and radiation machines issues and all kinds of issues
24 dealing with public health and safety, and I think they
25 should be used.

1 COMMISSIONER DICUS: Could you give us a
2 for-instance in this last situation?

3 DR. FLETCHER: A for instance? Well, the only for
4 instance I can think of is one that occurred in Maryland
5 several years ago, and that involved some misadministration
6 that occurred at a local hospital. The way the reporting
7 and the information was done, it appeared as though the
8 state didn't have a handle on the problem.

9 The reason it becomes a public health and safety
10 issue is if confidence in the state body that maintains
11 radiation health is reduced, then we are not as able to
12 protect the citizenry in the very things that we do on a
13 day-to-day basis.

14 I know there are more examples; that's just the
15 one that comes to mind right away.

16 CHAIRMAN JACKSON: Mr. Ratliff, did you want to --

17 DR. FLETCHER: Go ahead.

18 MR. RATLIFF: Just this past month, we had two
19 incidents going simultaneously. One was a several hundred
20 millicurie cesium source that was in a coke plant -- not
21 Coca-Cola, but a plant that makes industrial coke -- that
22 they couldn't account, and so we had team survey and we
23 notified NRC.

24 Our incident people were continually barraged by
25 people almost wanting half-hour to hour updates. Well, at

1 the same time, we had a 60-milligram radium nasal ferronageal
2 applicator that a lady found in her house that her deceased
3 physician husband had left, which was a much greater hazard,
4 yet we had to leave one person to keep answering NRC's
5 questions and dilute our response team to the second
6 incident.

7 CHAIRMAN JACKSON: Please.

8 COMMISSIONER DICUS: Back up to the issue just
9 before this where you had the health and safety where you
10 were talking about providing information of an instant to
11 the NRC, but it's still an ongoing incident or situation,
12 whatever the case may be, and you are not necessarily going
13 public with it in the state or haven't necessarily taken it
14 to the full course that you plan to do, but we preempt and
15 put out a press release or a notice before others have maybe
16 been notified in the chain of command in the state.

17 If that characterized the problem that you were
18 trying to get across, have you thought of a solution, and
19 has the LAS kind of come together, gone to the states and
20 looked at this and come up with what you think would be an
21 effective way to deal with it? Because what I see as a down
22 side of this is the states not reporting incidents until you
23 are ready to take whatever other action, which you wouldn't
24 want to happen.

25 DR. FLETCHER: Well, as I suggested, perhaps

1 that's something that we can work together on, because I
2 know that as the requirements are now, once you get this
3 information, you are virtually obligated to put it in some
4 kind of an information -- a public information arena. But
5 perhaps the way it's put in that arena can be jointly
6 developed, so that our -- I mean, it's not that we're not
7 going to make a press release, but our press releases, you
8 know, normally have our -- we have our own chain of command
9 to go through in order to make sure that that press release
10 says what the situation is and all of the officials are on
11 board with it, and if there were a way that we could put out
12 a press release that virtually says the same thing, I think
13 the states would be very pleased with that.

14 CHAIRMAN JACKSON: I understand the point you
15 make.

16 We have to be careful from a public point of view
17 that we're not seen as suppressing information --

18 DR. FLETCHER: And we don't want to be --

19 CHAIRMAN JACKSON: -- you know, that has potential
20 implications for public health and safety. But again, I
21 think that Commissioner Dicus' comment about sitting down
22 and trying to come up with solutions -- we also have the
23 public communications initiative that's ongoing and there is
24 a task force. So I would recommend that, in fact, you meet
25 with our director of public affairs -- his name is Bill

1 Beecher -- and try to talk about some of this within that
2 context.

3 DR. FLETCHER: At this time, I'll be followed by
4 hopefully Bob Quillin by telephone.

5 CHAIRMAN JACKSON: Mr. Quillin, are you there?

6 COMMISSIONER MCGAFFIGAN: Technology fails.

7 CHAIRMAN JACKSON: Is someone prepared to do his
8 presentation?

9 COMMISSIONER MCGAFFIGAN: We could go out of order
10 and see if they can get him.

11 CHAIRMAN JACKSON: Right. Why don't we do that
12 and see if we can get him reconnected. Why don't we go on
13 to the next topic.

14 DR. FLETCHER: Stan Marshall, then, will proceed.

15 CHAIRMAN JACKSON: Okay.

16 MR. MARSHALL: We had initially set up our
17 presentations so that Bob offered part one and I offered
18 part two, but I will proceed.

19 Chairperson Jackson, Commission members, I am
20 honored to participate today in this briefing. I appreciate
21 the time from your busy schedules to hear the concerns and
22 interests of the organization of NRC Agreement States.

23 Bob Quillin would have mentioned the ongoing
24 Department of Energy transition. Some may describe that DOE
25 process as an aggressive struggling transition toward

1 privatization of the DOE complex and other considerations
2 for alternative uses of the complex beyond the more than
3 40-year-old traditional missions of the DOE.

4 This transition, however it is described, is
5 complicated by the appearance of legal interpretations
6 changing related to longstanding concepts such as contractor
7 exemptions and evolving national objectives for that federal
8 agency.

9 One expression of changing objectives of the
10 agency might be characterized by Mr. Carl Gertz, acting
11 assistant manager for environmental management, Department
12 of Energy, Nevada Operations. When he recently presented an
13 overview of the activities of the Nevada DOE office at a
14 meeting in Las Vegas in January, he informed the audience
15 that the three current missions of the DOE Nevada office are
16 to assist in providing for the safe management of
17 radioactive materials within the DOE complex, to provide a
18 secure and environmentally suitable interim storage for
19 low-level waste, and to transition the Nevada test site
20 facility into an information center for research and
21 development.

22 His remarks suggest a very different picture than
23 the ingrained images of past DOE activities in Nevada. A
24 number of Agreement State program representatives were in
25 that audience to hear his remarks. I believe those present

1 and others aware of ongoing DOE transition may feel that
2 state radiation control program involvement can facilitate
3 the DOE objectives however they are described to protect
4 public health and safety, but we have some obstacles in the
5 way.

6 It is commonly understood and not a simple
7 statement to say that NRC decisions and policies have a
8 tremendous impact on 30 Agreement State programs and 20 NRC
9 state programs, and so a tremendous impact on the general
10 public and regulated communities impacted by those
11 requirements.

12 Radiation control programs in 13 DOE states
13 basically defined as states with DOE facilities, of which
14 twelve are Agreement States, have many years of experience
15 with various levels of relationships with DOE.

16 In the case of the State of Nevada, the Agreement
17 State program is located in the Nevada State Health
18 Division, the state radiation control agency.

19 The division has had many levels of working
20 technical relationships with DOE Nevada staff since at least
21 1972. I personally have had professional relationships with
22 many DOE Nevada staffs since 1980, including radiological
23 emergency response planning concerning DOE's shipments and
24 for other Nevada DOE activities, unclassified technical
25 information exchange about DOE activities on the test site

1 and other DOE properties in the state, and interaction with
2 many public relations scenario that have offered experiences
3 not available in other relationships with with the private
4 sector regulated communities.

5 Some of the experiences indicate the appearance of
6 a double standard for perspective and incentives about
7 protection of health and safety from hazards. State
8 radiation control programs, Agreement State or not,
9 implement state laws and regulations, incorporating commonly
10 accepted radiation control criteria and continue to be
11 challenged to implement appropriate programs within state
12 and local constraints and support of our state governments,
13 and we desire to participate with DOE and NRC to ensure
14 state public health mandates are consistently met.

15 Terms such as oversight, pilot programs external
16 regulations, and other new terms have come to fill our
17 vocabulary where issues and opportunities associated with
18 these terms did not exist less than five years ago. The
19 thirty Agreement States, the 13 DOE states specifically, and
20 the NRC have a tremendous opportunity at hand.

21 Some concerns about inconsistent application of
22 commonly accepted radiation control criteria have been
23 expressed and many more could be elaborated, but at this
24 time, I will step forward to encourage dialogue towards
25 solutions.

1 Solutions, yes. We the organization of Agreement
2 States encourage the Commission to invite state radiation
3 control program directors to work more closely with NRC
4 staff to provide states' perspectives about DOE oversight
5 and regulatory matters. We believe we can offer productive
6 equitable solutions and participate with NRC to resolve DOE
7 longstanding issues and newer evolving radiation control
8 issues.

9 I believe that it is the experience of state
10 radiation control programs on behalf of the general public
11 that may provide significant perspective, and I encourage
12 widening the circle to share those ideas.

13 I also offer a reminder of the example of the
14 conference of radiation control program directors E20
15 committee on federal facilities. The committee is in place,
16 functioning with a charge from the DOE to provide input to
17 the agency about states' concerns to protect health, safety
18 and environment.

19 At a first meeting of the committee in 1996, Mr.
20 Al Alm from the Department of Energy met with a group in
21 Washington, D.C. to hear our concerns and successes about
22 the various agreements in principle between DOE and the 13
23 states. Following that meeting, Mr. Alm issued a memorandum
24 to all DOE regional offices encouraging contact with and
25 inclusion of the state radiation control programs as the DOE

1 continues to negotiate agreement in principle program
2 activities in each state, sometimes not involving those
3 programs.

4 Mr. Mike Mobley, Agreement State program director
5 in the great state of Tennessee, is the current committee
6 chairperson. I'm sure that Mike would respond to any
7 invitation from you to share committee member perspectives.

8 On behalf of the other OAS officers and all
9 Agreement States, I support the suggested ideas and other
10 ways to resolve issues of the appearance of inconsistent
11 applicability of commonly accepted radiation control
12 criteria, and I encourage long-term objective -- the
13 long-term objective of constructive progress towards
14 seamless radiation control mechanisms.

15 Whether non-regulatory oversight programs,
16 regulatory programs as we know them, or a combination of
17 mechanisms, even options unnamed at this time, it is
18 important that the commonly accepted radiation control
19 criteria be applied to all users of radioactive materials,
20 including those previously exempted.

21 I believe a comprehensive program applying these
22 standards to all users of materials can be done with
23 minimization, even elimination of the problems which
24 confound public perceptions of inconsistent levels of
25 protection of public health and safety. I believe the

1 answers are out there. I believe that with diligent
2 persistence to embrace our roles as radiation control
3 agencies, the NRC and Agreement State programs can lay claim
4 to those answers and the successes that come with them.

5 I appreciate this opportunity to appear today and
6 I welcome comments or questions.

7 Thank you.

8 CHAIRMAN JACKSON: Thank you.

9 I actually do have one question and it concerns
10 the issue of sovereign immunity. Do you believe or do you
11 have a view on the regulation of DOE facilities and the
12 extent to which you feel they constitute a unique situation
13 compared with other federal entities such as the Department
14 of Defense, Department of Veterans Affairs, Department of
15 Health and Human Services, Department of Agriculture?

16 MR. MARSHALL: I believe it's within today's
17 environment of the changing priorities for DOE that special
18 treatment or different treatment begins to fade. I think
19 there are examples of activities on properties within the
20 DOE complex that don't fall into the old traditional
21 national security issues which --

22 CHAIRMAN JACKSON: That's specifically, though,
23 why I brought up Veterans Affairs, Agriculture and Health
24 and Human Services, because they also don't fall under the
25 umbrella of national security in that sense.

1 MR. MARSHALL: It's my limited experience in the
2 state of Nevada that some of these agencies are at least
3 willing to hear us, at least willing to participate and take
4 our input, whether it's regulatory or a less aggressive
5 oversight program, and I think they are becoming willing to
6 participate as the rest of the regulated community does.

7 CHAIRMAN JACKSON: Okay.

8 Commissioner?

9 COMMISSIONER McGAFFIGAN: The only comment I would
10 make is that these words that are getting into the
11 vocabulary about these various pilot activities, there's
12 relatively modest activity, and I believe in both states
13 where there is something going on, California and Tennessee,
14 that the state is involved in the pilot activities, and I
15 think it's going to be a long, slow process. There may well
16 be opportunities for both us and the states, but it's -- I
17 don't think we're hiding the ball from you. We are very
18 early in a process -- I don't know whether we have the third
19 pilot -- it is a candidate facility in South Carolina --

20 CHAIRMAN JACKSON: South Carolina.

21 COMMISSIONER McGAFFIGAN: Again, it's an Agreement
22 State, and again, I suspect that they will be invited to
23 participate in whatever way they want to, and legislation is
24 still a gleam in our eye or somebody's eye.

25 CHAIRMAN JACKSON: Somebody's eye.

1 COMMISSIONER MCGAFFIGAN: But it's not before the
2 next Congress. So we're not hiding the ball. If the staff
3 wants to say anything later on this --

4 CHAIRMAN JACKSON: Yes. I think we can let Mr.
5 Austin or someone speak to it.

6 Thank you.

7 COMMISSIONER MCGAFFIGAN: Thank you.

8 MR. RATLIFF: I think one difference we see in the
9 radiation versus our sister agencies that are doing EPA RCRA
10 is that they, under their programs, were delegated programs,
11 and they have authority. When we want to look at something
12 that's radioactive waste related or Pantex, we just go with
13 them because it's mixed waste and we can get in; whereas if
14 we went on our own, we wouldn't have the authority. The DOE
15 people would let us on, but just as an example, if we really
16 had to get on, they have the authority.

17 It may be that it's a change and, like you said,
18 legislation will have to be passed to really make it so that
19 all the environmental programs are on the same footing.

20 CHAIRMAN JACKSON: No, I understand the point you
21 are making, but my issue had to do with the sovereign
22 immunity and oversight of federal facilities at the state
23 level in a real regulation sense. But I think it's an issue
24 that we are, you know, going to be fleshing out within the
25 context of the pilots, and I would agree with my colleague,

1 Commissioner McGaffigan, that, you know, we haven't hidden
2 any marbles here. You know, we're just getting started.
3 And I think these things are going to have to be fleshed
4 out, but I think the issue is on the table, because from a
5 legislative point of view, one is looking at what the
6 precedent is relative to other federal facilities in any
7 number of states, not just DOE.

8 COMMISSIONER MCGAFFIGAN: The last thought for the
9 member from Texas is that we have a briefing later this week
10 from DOE about Mox and Mox fuel and plutonium disposition in
11 general, mobilization as well. But the NRC role in that
12 will have to be legislated if it is going to exist, and this
13 issue again will come up in that context.

14 If there is going to be legislation moving through
15 the process, that may well be the first piece of legislation
16 that you all have to take a --

17 CHAIRMAN JACKSON: He's inviting you to take a
18 look at that.

19 MR. RATLIFF: Yes. And in fact, we've been
20 working with --

21 COMMISSIONER MCGAFFIGAN: Come back Friday. Is it
22 Friday?

23 CHAIRMAN JACKSON: That's right.

24 MR. RATLIFF: You know, through our office, DOE
25 has sponsored two training sessions for all state involved

1 agencies on Mox fuel. So we have been really anticipating
2 that we might have a facility that's taking the plutonium
3 and doing the conversion.

4 DR. FLETCHER: At this time, I would like to find
5 out if Bob Quillin is available.

6 CHAIRMAN JACKSON: Yes.

7 MR. LOHAUS: Paul Lohaus with state programs. We
8 have confirmed through the commercial operator that Bob is
9 on the line, he's able to hear us fine. He does have a line
10 which should enable him to also speak, and he did indicate
11 that at the end of this presentation, he would interject and
12 begin his presentation. So let's maybe just see if Bob can
13 hear us and see if he can maybe interject.

14 Bob?

15 I also confirmed that the lines here are working
16 and we've also called back out independently to him. So I
17 guess given that we're not able to hear him, Roland, maybe
18 you or one of the other members can cover Bob's material,
19 but apparently we're just not able to hear him. But the
20 operator did confirm that he does have a both listen and
21 speak capability.

22 CHAIRMAN JACKSON: Okay.

23 MR. LOHAUS: He should have.

24 CHAIRMAN JACKSON: Why don't we continue.

25 DR. FLETCHER: Well, rather than preempt Bob -- he

1 may get on later -- let's move to Richard and let Richard
2 give his presentation and hopefully Bob can come back in and
3 we'll be out of order.

4 CHAIRMAN JACKSON: Step out for a second.

5 MR. RATLIFF: What I'm going to do is give you
6 some copies that are not in your packet. I didn't want to
7 cut down a whole lot of trees, being from West Texas where
8 there's very few trees, but in our Texas law, we're required
9 to keep all radiation records forever. That says we can
10 never destroy them. So we have an active microfiche
11 program, active CD-ROM program. But I was able to retrieve
12 the correspondence -- if I could get someone to pass this,
13 please -- the initial correspondence that Texas had when we
14 were becoming an Agreement State.

15 What I think you'll notice is interesting is that
16 back in the '60s, we were one of the first group of
17 Agreement States -- number five -- and so there was a lot of
18 coordination back and forth. It was a new process to the
19 Atomic Energy Commission. And as I went through looking at
20 this data, they talked a whole lot about the stages. They
21 were transferring licenses to us, initially transferring
22 licenses, that there was definitely only a Texas use, and
23 then looking at licenses where they may have use in Texas
24 and other states, and looking at a third group of licenses
25 that were really being retained by the AEC at the time.

1 As I looked through this and I called my mentor
2 and my former boss, David Lacker, and he says -- I asked
3 him, did they ever discuss terminated files? And he said,
4 no. I asked, well, did we ever receive terminated files
5 because we didn't have them in our files and we have all
6 kinds of other miscellaneous stuff that I don't see any
7 value of, that this would have been better to have, and he
8 said, no.

9 So I think when you look at this, if you look at
10 the second to the last -- they're stapled together -- what I
11 think you will see is that the Atomic Energy Commission did
12 set up groupings of licensees, and in this 1965 memorandum,
13 which was an internal one, which was distributed to the
14 Agreement States, I assume, from the regions, the Atomic
15 Energy Commission did set up the three divisions, the group
16 one, group two and group three, and went into real detail on
17 what these groups included, and you'll see here again that
18 they never included terminated licenses.

19 So I think the states, as they became Agreement
20 States, they received files, they started doing their
21 inspections, started doing their licensing, but they
22 assumed, as we did in Texas, that the terminated files were
23 terminated, that they had been decontaminated successfully,
24 or else we would have been transferred those files.

25 When I went back -- this was kind of a difficult

1 one because I looked at the law, and I think the law
2 specifically and very directly -- we received the authority
3 to regulate byproduct materials. So in many cases, we have
4 sites in some states that they don't even have a file on,
5 and yet they have byproduct materials; they are trying to
6 track it back.

7 I think the whole thing we're going to have to do
8 here is try to find solutions. I know the same issue that
9 came up with my colleagues in the Agreement States has come
10 up with you all many times, is we can't use our licensee's
11 fee resources to do something other than regulate their
12 facilities, and that's what we're having to do here. In
13 fact, we've done this by spending time already going back to
14 old sites. We're taking their money and using it to do
15 these inspections.

16 As we've talked among the Agreement States, there
17 are several things we could do. The Atomic Energy Act, when
18 you get down to -- let me find my place here -- 274(j)(2)
19 would allow the governor of each of the states to tell NRC
20 that these licenses that were terminated before we became an
21 Agreement State we relinquish back to you. Then there would
22 be no question that the NRC has legal authority to take care
23 of these sites.

24 I'm not sure that will work in all states, and I
25 really think a more positive approach would be to, as we

1 work together with Congress, to look if there's an area
2 where there are sites that were transferred to states. We
3 had the same issue very similar with the uranium tailing
4 sites, where -- I know in Texas, we had one Title 1 site
5 where the state paid for ten percent of the cleanup and the
6 federal government paid for 90 percent, and the outcome was
7 we took care of a problem that was started because of the
8 early Atomic Energy regulatory programs, and I think that's
9 what I would hope we would work towards here.

10 I would be willing to answer any questions.

11 CHAIRMAN JACKSON: Commissioner.

12 COMMISSIONER DICUS: I think we have the same
13 questions.

14 CHAIRMAN JACKSON: Oh. Well, then, I'll let you
15 go.

16 COMMISSIONER DICUS: You know, one of the things
17 we're dealing with is -- two or three questions about this,
18 but one, just what are the resource implications for a state
19 to go out, assess these sites and to handle them? And do
20 you have speakers on that?

21 MR. RATLIFF: Well, I think it varies so much from
22 state to state. In our case in Texas, all but three of the
23 sites that we're looking at now are current licensees of
24 ours. So we're working through them. It's not going to
25 cost us anything additional.

1 Two of them we have, we know that they had a
2 certain material and a name, but there's no address, no --
3 nothing else to follow through on. So we have no leads at
4 all on those.

5 Some states, California in particular, New York,
6 may have a few, have sites that have a lot of contamination
7 that may cost millions of dollars with the cost of low level
8 waste -- to decontaminate and dispose of the material. So I
9 think each of the states will really need to coordinate with
10 you all to let you know what they have, and I think we have
11 been working towards this; it's just the bottom line, when
12 you get to the point of the state would be responsible to
13 clean up the site, have it decommissioned properly, is where
14 we run into the fact that we don't have the funds to do it.

15 CHAIRMAN JACKSON: Commissioner McGaffigan? Oh,
16 I'm sorry, were you done, Commissioner?

17 COMMISSIONER DICUS: No, but --

18 CHAIRMAN JACKSON: I'm sorry. No, please.

19 COMMISSIONER DICUS: Well, one of the issues
20 dealing with this is that of all the states that have some
21 of these sites, there's really only a few that seem to be
22 heavily impacted or for whom it seems to be a problem. Many
23 states have already taken care of the issue one way or the
24 other.

25 I guess I'm trying to characterize just how -- is

1 this really localized to a few states and all the states are
2 sympathetic to it, but it's really only a few states, and
3 leading to the solution that we've looked at or suggested is
4 possibly getting some relief from Congress to get some
5 funding for the states to be able to do this. But we've got
6 to have the information, we've got to have the help from the
7 states to go forward to do this, and I'm trying to get a
8 feel just how willing the states are to do this and whether
9 or not it's really as widespread a problem or is it highly
10 localized.

11 MR. RATLIFF: I think it's going to be more highly
12 localized from the comments I've received from states. You
13 know, New York and California obviously have a lot of the
14 sites. Like I say, many of the states that had contaminated
15 sites, there was a sister licensee or something, and over
16 the years, we cleaned them up, especially when waste
17 disposal was real inexpensive.

18 I think the polling of the states, though, to make
19 sure, because there's some uncertainty in some of the new
20 Agreement States, I would think, Illinois, Massachusetts,
21 just to see what they have. But I know for sure that
22 California and New York have problems. Other states --
23 Arizona -- Audrey Godwin had written me and had shown that
24 they have I think a medium problem, but they just feel it's
25 not a problem that should be theirs.

1 I think the states would be more than willing,
2 though, and I think it would be a good discussion when we
3 come back for the Agreement States meeting to look at what's
4 there, what's it going to cost, and sometimes even getting
5 permission to get on the sites I think may be a problem, but
6 each state is going to have to work through those issues.
7 But I think when you get to the impasse of no funds from
8 their legislatures even to do their basic programs, you have
9 to really work hard. To do this additional I think will be
10 real burdensome on the staff.

11 COMMISSIONER DICUS: Well, this is the sort of
12 case you're going to have to make if we are to get relief
13 from Congress.

14 MR. RATLIFF: I agree, Commissioner.

15 COMMISSIONER DICUS: It's going to have to be a
16 strong case.

17 CHAIRMAN JACKSON: Right. And piggy-backing on
18 that, I mean, you mentioned, you know, discussing this at
19 your next meeting. Leading up to that meeting, is it, in
20 fact, possible for you to do some kind of a survey so that
21 you would know what the situation is, and then have a basis
22 for having the discussion? It strikes me that some of this
23 information is information that people, unless they were
24 given a heads up, wouldn't be prepared to discuss on the
25 spot --

1 MR. RATLIFF: Oh, I agree.

2 CHAIRMAN JACKSON: -- at a meeting.

3 MR. RATLIFF: I think from each of the different
4 states, we've gotten a list from NRC, we've -- some of them
5 looked at all of them; some of them have looked at parts of
6 them. I think it would be beneficial to get the current
7 status. We know a lot of them have gone away. They were
8 sealed sources only, there's no contamination, but then to
9 get you an estimate so -- Congress is not going to
10 appropriate unlimited money -- I agree, we'll have to come
11 up with a good argument on the amount of money and then go
12 forward, and I think we are more than willing to coordinate
13 that.

14 CHAIRMAN JACKSON: Okay.

15 Go ahead.

16 COMMISSIONER McGAFFIGAN: I think, again, you've
17 seen the SRMs on this matter -- the Commission is willing to
18 work with you, but we need the information.

19 CHAIRMAN JACKSON: Right. Okay. Thank you.

20 DR. FLETCHER: Once again, I would like to
21 petition the gods of communication to see if Bob Quillin is
22 on the line.

23 MR. QUILLIN: Hello. Can you hear me?

24 DR. FLETCHER: Yes. Welcome.

25 MR. QUILLIN: I've heard everything you said.

1 DR. FLETCHER: Have you heard everything?

2 MR. QUILLIN: I have heard everything, yes. I
3 haven't been able to speak, that's all.

4 DR. FLETCHER: Okay. Well, the floor is yours.
5 Bob Quillin, who is our past chairman from
6 Colorado.

7 MR. QUILLIN: I appreciate the opportunity to
8 speak to you by telephone, and I have some slides and
9 transparencies, which -- the first one is entitled
10 Regulatory Issues Related to DOE Contractors and
11 Subcontractors.

12 The next transparency or slide refers to the fact
13 that DOE has undergone organizational changes in the past
14 year. As an example, one of the DOE sites, the Rocky Flats
15 site, is no longer a production facility; it's now called
16 the Rocky Flats Environmental Technology Site with different
17 activities. There are changes going on throughout the DOE
18 system.

19 For example, I have a nice shiny brochure here
20 from Sandia National Laboratories which highlights their
21 robotics activities at Sandia National Laboratories which I
22 don't think is what they were initially conceived of when
23 DOE was formed. These items highlight changes going on at
24 DOE facilities.

25 One other perspective on this is the issue of

1 what's going on on-site at a DOE facility versus what's
2 going on off-site at a DOE facility and how these activities
3 confuse the traditional functions of DOE.

4 DOE is still in a state of transition in slide
5 number three, and we expect, from what we see, that the
6 transition will continue into the future. We'll receive
7 different missions and different responsibilities.

8 On slide number 4, the concept of the DOE prime
9 contractor is no longer universally valid. Rocky Flats, as
10 an example, has what we call a coordinating contractor, and
11 under the coordinating contractor, they have a secondary
12 contractor who performs the bulk of the functions that you
13 would normally expect the prime contractor to perform in
14 past years.

15 Another issue is that as the functions and
16 missions change, DOE has encouraged the use of -- private
17 sector use of DOE facilities. These production facilities
18 such as Rocky Flats have a unique capability, and DOE has
19 encouraged -- Rocky Flats, for example, has hired a group to
20 explore options in the re-use of the facility and optimize
21 the capability of Rocky Flats as a commercial venture.

22 Can you hear me?

23 DR. FLETCHER: Yes.

24 MR. QUILLIN: Okay.

25 One main project they had at Rocky Flats is a

1 project involving re-use of the facility. They went to the
2 first and second phases of a feasibility study, a clean-up
3 study, a clean-up phase, and when they got to the third
4 phase, they decided they didn't want to go any further. DOE
5 made the determination that the activities as proposed were
6 not essential to the DOE mission, activities which should
7 fall under the regulatory oversight of the Nuclear
8 Regulatory Commission.

9 On slide number 6, one of the things that we have
10 observed is that DOE's sub and sub-sub contractors are
11 looking to the day when there will no longer be DOE
12 contracts and they will have to work independently of DOE
13 facilities. So they are looking for activities outside the
14 DOE world, and particularly business opportunities outside
15 the DOE world.

16 States, in my slide number 7, are receiving what I
17 would call inconsistent messages from Washington and from
18 the DOE sites as to the role of the states in these
19 activities. So one problem we have is we don't know
20 basically what our role is, and states have become
21 frustrated and, as Stan expressed earlier, they're looking
22 for a solution, and I think there are potential solutions
23 out there to these questions, I think.

24 CHAIRMAN JACKSON: Do you have any solutions you
25 care to share with us?

1 MR. QUILLIN: There has to be a determination as
2 to activities, specifically DOE activities, which occur
3 outside of the DOE real estate as to who is responsible, who
4 is going to take responsibility to ensure public health and
5 safety when these occur, and that determination I think has
6 not been made. I think the question is still up for
7 discussion right now. There needs to be a decision whether
8 the NRC is going to be responsible for such activities.

9 So it's a question. I don't have the answer.

10 CHAIRMAN JACKSON: Okay. I think Commissioner
11 McGaffigan has a question.

12 COMMISSIONER MCGAFFIGAN: I have more of a
13 statement. You should again understand that NRC receives
14 inconsistent messages as well and occasionally is frustrated
15 as well. And so if there is a policy coming out of
16 Washington, it's an all azimuths policy that includes sister
17 federal agencies.

18 CHAIRMAN JACKSON: All right. Okay. Thank you
19 very much.

20 MR. QUILLIN: I'm glad I got on eventually.

21 CHAIRMAN JACKSON: Well, we're glad you got on at
22 all.

23 MR. QUILLIN: Okay. Thank you.

24 CHAIRMAN JACKSON: Thank you.

25 DR. FLETCHER: As we continue, Chairman Jackson,

1 let me bring up one item that I overlooked earlier as a part
2 of our discussion, and the whole area of allegations is one
3 area that the states would like to at least have a dialogue
4 with the Commission on. We are very eager to resolve any
5 matter that someone in the public may or a licensee may
6 bring up, but oftentimes, the information we receive is
7 extremely limited, to the point where we are given
8 information about an incident or a situation and with so
9 little information to go on that it's very difficult to
10 follow up.

11 We ask only that, once again, I think we need to
12 have a meeting of minds on how to better address these
13 issues. I've personally received telephone calls from our
14 regional office that an allegation has been made and have
15 had a difficult time just getting some additional
16 information to resolve the matter, and I think that's both
17 of our goals, so we would just ask for the opportunity to
18 develop a procedure whereby we can fulfill the ultimate goal
19 of resolving allegations.

20 CHAIRMAN JACKSON: Do you have formal processes
21 for dealing with and following up on, investigating and
22 protecting allegeders' identity? Each of your members has
23 those programs?

24 DR. FLETCHER: To the best of my knowledge, I
25 believe so. I believe that's one of the requirements for --

1 I mean the legislative requirements in establishing the
2 state --

3 MS. CYR: That's one of the things that's looked
4 at in the IMPEP process, too, specifically.

5 CHAIRMAN JACKSON: Okay. Thank you.

6 DR. FLETCHER: At this point in time, I would like
7 to provide the Commission with a letter from the Agreement
8 States, from the majority of the radiation staffs of the
9 Agreement States. It is a position statement supporting the
10 clean-up standard that has recently been published. We did,
11 as you spoke of earlier, we have done a survey of states and
12 the majority, a very strong majority, do support the
13 clean-up standard, and we have itemized in this statement
14 some of the reasons why, and also we emphasize the need for
15 consistency that we see across the board.

16 We are dealing primarily with a public that
17 sometimes we all send confusing messages to, and it's very
18 difficult for that public to assess what should be
19 considered safe and what's not safe and why this agency says
20 this and why this agency says that.

21 The states have to deal with these same kinds of
22 questions and, you know, by this support, hopefully we would
23 have voiced at least our position on the direction that this
24 should go.

25 CHAIRMAN JACKSON: Well, I might suggest you might

1 want to consider sending it also directly to the Congress.
2 Commission McGaffigan can tell you where to send it.

3 [Laughter.]

4 COMMISSIONER MCGAFFIGAN: I thank them for doing
5 that.

6 CHAIRMAN JACKSON: And we do appreciate this.

7 DR. FLETCHER: The final item that I have on my
8 agenda is to extend to you, Chairman Jackson -- this is -- I
9 wanted to have it written but didn't quite get around to it
10 -- to you, Chairman Jackson, the members of the Commission,
11 NRC staff, we want to extend an invitation to our annual
12 Agreement States meeting which will take place in
13 Manchester, New Hampshire October the 29th through the 31st.

14 Our radiation program manager there, Diane Teft,
15 has already been doing some extensive preparatory work and I
16 have a pamphlet -- unfortunately, I only have one, so you'll
17 have to share -- but that talks about the location that she
18 has found there. So I --

19 CHAIRMAN JACKSON: Thank you.

20 DR. FLETCHER: I invite you all. I hope that you
21 will be able to attend and participate actively in this
22 activity.

23 CHAIRMAN JACKSON: Thank you very much.

24 I'm going to ask the NRC staff, in making its
25 presentation, to follow up in each of these areas that you

1 have presented and to speak to them.

2 I do think communication and expectations are --
3 having them clear are very important issues. It strikes me
4 that, with some of what you've said, that, as I indicated
5 earlier, a key to some resolution or at least understanding
6 is to have the right people talk with the right people, and
7 I think we need to begin that way so that you understand our
8 processes, understand the legal constraints, et cetera, and
9 I think -- and then that puts everyone on a footing to be
10 able to then to discuss how to address the issues in a
11 rational way.

12 But I appreciate your taking the time to come, and
13 this has been very helpful, and again, I echo my colleague,
14 Commissioner McGaffigan, in thanking you on behalf of the
15 Commission for the support that you have provided in a
16 written form relative to our clean-up standard.

17 Thank you.

18 DR. FLETCHER: Well, we appreciate you taking the
19 time to listen to us.

20 CHAIRMAN JACKSON: Great. Thank you.

21 We'll now hear from the NRC staff. And thank you,
22 Mr. Quillin.

23 The Commissioners wanted me to announce the
24 results of the SES bake-off.

25 [Laughter.]

1 MS. CYR: I'm still smarting from the loss.

2 [Laughter.]

3 MR. THOMPSON: I don't like the title of
4 half-baked. That's what I got.

5 [Laughter.]

6 CHAIRMAN JACKSON: Mr. Thompson, good to see you.

7 MR. THOMPSON: Thanks. Thank you, Chairman,
8 Commissioners.

9 Today, obviously we are here to address one of the
10 most important parts of our regulatory program; it's the
11 materials area, both for NRC and Agreement States. We are
12 focused primarily on the results of the IMPEP program for FY
13 '97, but as you may recall, we have used that program now to
14 evaluate all of the NRC regions and over half of the
15 Agreement State programs, and we haven't gone all the way
16 through the process and we are going to give you kind of
17 some lessons learned and where we are today.

18 Before I would -- I'm sure you are well aware that
19 we have -- the IMPEP board includes myself as the head and
20 Dick Bangart and Carl Paperiello, Tim Martin is the head of
21 AEOD, and Karen Cyr, but also, we have advisors, and the
22 gentlemen that were up here just before you presenting the
23 Organization of Agreement States participate in the IMPEP
24 boards and really add a significant contribution to the
25 discussion and dialogues, and in some, we've had some real

1 tough cases and they were very helpful in doing that, and
2 each of these individuals have done that with the exception
3 of Stan, and we will welcome him the future, but that has
4 been a real advantage of having the Agreement State
5 directors as well as the team members from the individual
6 teams, and I think they have valued their participation in
7 it and we certainly had outstanding support from that.

8 I would just like to publicly thank them, and I
9 know that there are those that are on the telephone bridge
10 as well as the regions, so I think that has been very good.

11 We have some prepared remarks. I don't know
12 whether you would like for us to kind of go through those
13 first and then we'll try to address the questions afterwards
14 and hopefully we'll move fairly quickly.

15 With me today is Don Cool, who is kind of
16 overseeing the regional materials program, and Dick Bangart
17 and Paul Lohaus from the Office of State Programs, and Dick
18 will lead the briefing today.

19 CHAIRMAN JACKSON: Okay.

20 MR. BANGART: Thank you, Hugh.

21 Chairman Jackson, Commissioners Dicus, Diaz and
22 McGaffigan, good afternoon.

23 During the briefing, I will discuss in general the
24 major IMPEP program accomplishments achieved in Fiscal Year
25 '97. I'll discuss in more detail the results of IMPEP

1 reviews of regional and Agreement State programs completed
2 that year, and I will also discuss the staff's successes in
3 improving the timeliness of IMPEP reporting and close by
4 discussing what we have learned to date from the IMPEP
5 program experience.

6 The second slide lists the major IMPEP program
7 accomplishments that were achieved in '97. The first
8 accomplishment was the significant revision to management
9 directive 5.6 and its associated handbook which provides
10 IMPEP program direction.

11 Procedural guidance for evaluating the six
12 non-common performance indicators was added to complement
13 the guidance for the five common performance indicators.
14 The revision now also reflects the final Commission policy
15 statement on adequacy and compatibility of Agreement State
16 programs. The management directive and handbook are now
17 comprehensive and contain final procedural guidance for all
18 performance indicators that are evaluated during an IMPEP
19 review.

20 Second, in December of each year, training of NRC
21 and Agreement State staff that serve on IMPEP teams is
22 conducted by NMSS and OSP. Last December, over 45 students
23 received either initial or refresher training during the
24 one-day session.

25 Additionally, with the help of the Office of Human

1 Resources, a second day of training for team leaders was
2 conducted for the first time. That team leader training was
3 particularly effective in addressing the importance of group
4 dynamics during team evaluations.

5 Third, the timeliness of IMPEP reporting, as I
6 indicated, has improved as directed by the Commission, and I
7 will address this in more detail on a later slide.

8 Fourth, as planned, two regional and eleven
9 Agreement State IMPEP reviews were completed in '97, and I
10 would like to address the results of the 13 reviews in more
11 detail before I return to the subject of report timeliness.

12 The primary objective of the reviews of both
13 region and Agreement State reviews is to assess program
14 adequacy, which indicates the reasonable assurance of
15 protection of public health and safety is being provided.
16 An adequate finding means that there are no significant
17 weaknesses in the program being assessed that could impact
18 the ability to protect public health and safety.

19 A finding of adequate but needs improvement means
20 that the program also adequately protects public health and
21 safety, but that important weaknesses exist in one or more
22 areas that are reviewed that need to be addressed.

23 For example, an unsatisfactory rating in any
24 single performance indicator could result in an overall
25 finding of adequate but needs improvement.

1 For an adequate but needs improvement finding, the
2 management review board could direct that a follow-up review
3 be conducted in one year. It could direct that a full IMPEP
4 review be conducted earlier than the nominal two- or
5 four-year period that is normally applicable for regions and
6 Agreement States.

7 The MRB could also call for heightened oversight
8 through periodic progress reports and meetings or, in the
9 extreme, for an Agreement State only, the MRB could
10 recommend for Commission approval that a program be placed
11 on formal probation.

12 An inadequate finding for an Agreement State would
13 mean that protection of public health and safety is not
14 reasonably assured and the NRC then would have the
15 responsibility to reassert authority, at least on a limited
16 basis, until the program weaknesses were strengthened.

17 NMSS has stated an oversight and management
18 coordination of regional programs would likely identify
19 program weaknesses, and that would result in the initiation
20 of corrective actions for regional program approach and in
21 inadequate condition.

22 For Agreement States, a compatibility
23 determination is also made. An Agreement State is
24 compatible with the Commission's program when it does not
25 create conflicts, duplications, gaps or other conditions

1 that would jeopardize an orderly pattern of regulation on a
2 nationwide basis.

3 The next slide lists the IMPEP reviews that were
4 completed during the first half of Fiscal Year '97. Region
5 IV was adequate. Louisiana, California, Tennessee,
6 Mississippi, Colorado and Illinois were all both adequate
7 and compatible.

8 CHAIRMAN JACKSON: Let me ask you this question.
9 Is this the timeliness question or is it a separate one?

10 MR. BANGART: The furthest-most column on the
11 right, hopefully you'll be able to see a trend toward
12 improved timeliness, but I have the more graphic display and
13 some additional information later.

14 CHAIRMAN JACKSON: But in general, you're saying
15 it takes upwards of a quarter to a half a year?

16 MR. THOMPSON: For the entire process to work,
17 that's what happened early on. There were a few cases where
18 we are, I think, very timely in our initial feedback to the
19 states in getting our draft reports, and then we go through
20 a more formal process in which we actually engage the
21 management review board, and depending on particular issues,
22 we invite the states to respond back and participate at the
23 meeting. That's one of the valuable elements in being able
24 to provide what I called the real-time decisions that we
25 make.

1 It has the input from the state, and in fact, the
2 states in a couple of very important instances have
3 responded that a program that the team found and did an
4 inspection and had some real problems with, by the time the
5 MRB met, they had put in place processes, procedures, even
6 actions, to address some deficiencies, and therefore, we
7 make a call at the time we meet as to how we find the
8 program, not what necessarily was done at the day of the
9 final inspection.

10 So that constitutes some of the additional time
11 that's in there, although there's very quick feedback to the
12 states on what the finding of the team is.

13 MR. BANGART: There weren't any significant
14 weaknesses identified in any of the programs listed here,
15 although there were suggestions and recommendations made as
16 a result of each review.

17 You'll note that each of these programs are
18 scheduled for next review at the maximum interval permitted
19 by program guidance.

20 For Agreement States in the years between the
21 years when there's a formal IMPEP review, a one-day meeting
22 is conducted to discuss both NRC and Agreement State
23 programs and changes to those programs, and this discussion
24 will either confirm the schedule for the next IMPEP review
25 or result in a change based on current conditions.

1 The next slide shows the IMPEP reviews that were
2 completed during the second half of '97. Region III was
3 adequate, and Texas, New Hampshire and Nevada were adequate
4 and compatible, with all of those programs having their
5 reviews scheduled at the maximum interval.

6 New Mexico was initially scheduled for or
7 considered for probation, but commitments to dispatch
8 inspectors into the field to evaluate significant incidents
9 and other programmatic commitments that Hugh Thompson
10 received during a meeting with the New Mexico Secretary of
11 Environment resulted in a management review board decision
12 to apply heightened oversight and to conduct a follow-up
13 review in one year.

14 Heightened oversight is exercised through monthly
15 conference calls and written progress reports that are
16 submitted by the state of New Mexico every other month. New
17 Mexico is currently implementing actions to strengthen their
18 program in accordance with the plan and milestones that they
19 developed.

20 The Nebraska review last August was actually a
21 follow-up to the full IMPEP review that was conducted in
22 July of 1996. Since the July '96 review report was issued,
23 NRC has also been applying heightened oversight to the
24 Nebraska program after it too was initially considered for
25 probation.

1 The follow-up review team recommended that the
2 adequate but needs improvement finding remain in place for
3 Nebraska since all the program improvements were not
4 scheduled for completion until the end of this year.

5 CHAIRMAN JACKSON: So you're saying that if you
6 initially decide that an Agreement State program should be
7 placed on probation, that based on promises and commitments,
8 you typically say they're adequate but needs improvement?

9 MR. BANGART: It's the process that Hugh just
10 summarized where the team in both of these cases recommended
11 probation, but there were commitments and actions taken by
12 the state between the last day of their review and when they
13 were meeting --

14 CHAIRMAN JACKSON: Well, I'm interested --

15 MR. THOMPSON: It's more than just promises.
16 Actually --

17 CHAIRMAN JACKSON: I'm interested in promises
18 versus actions.

19 MR. THOMPSON: Right. It's really a combination
20 of both, that often when -- there are things that are
21 required by legislation sometimes that -- or promises, they
22 make commitments at the political leadership level in the
23 state for those programs as to their commitment to the
24 program, their willingness to go forward for funding, their
25 willingness to support the staffing, as well as in the --

1 for example, in the New Mexico process, one of the key
2 elements in their difficulties was their response to
3 incidents. At the time that we -- they did not have a
4 process and procedure in place. By the time we met with the
5 Secretary of the Department of Health, they actually had
6 demonstrated their capabilities to respond to instances, and
7 that was before the board when we made our decision.

8 Prior to that, there had not been an instance
9 between the team's inspection and evaluation report and the
10 initial MRB meeting for us to be able to make a decision
11 that the program was effective in responding to incidents
12 and events. Subsequently, we were.

13 CHAIRMAN JACKSON: Ms. Cyr?

14 MS. CYR: I would agree with you. Those instances
15 where there was a change made from what the recommendation
16 was by the team, by the MRB, that there were demonstrable
17 improvements in the programs during the time period before
18 the MRB met and reached its decision in both the cases of
19 New Mexico and Nebraska.

20 CHAIRMAN JACKSON: Okay.

21 COMMISSIONER DICUS: Do you have any thoughts on
22 how long you would be comfortable with a state being in a
23 situation where they have been found adequate but needs
24 improvement? For example, you go back to Nebraska in
25 September of this year and find the same situation, so it

1 goes for another year. I mean, is there a point in time
2 when you say enough is enough?

3 MR. BANGART: What we have done in each of these
4 cases to date is to follow what I'll call a probation like
5 process, and as part of that process, we request from the
6 state a what I'll call get well plan, a plan of action with
7 accomplishments that they plan to achieve as well as
8 milestones.

9 In these letters that are sent to us bi-monthly
10 and in these monthly discussions that we have, that's what
11 we track, is we've agreed this is what needs to be done, and
12 then we follow that through these monthly discussions and
13 through progress reports, and they, of course, get modified
14 slightly as events change around, but we're all basically
15 singing from the same song sheet about what needs to be done
16 and whether or not they're making progress toward that.

17 So if there are no good extenuating circumstances,
18 we say if they are unable to follow that plan, then we need
19 to revisit the finding with the state and management review
20 board.

21 MR. THOMPSON: In my sense, it's like -- in my own
22 view, we haven't got there, but it's three to four years.
23 You know, after the third year, I think we would elevate it
24 up to the Commission and this is what we would find, but I
25 don't think there's an automatic on-off switch along that

1 line.

2 But obviously, if a program is struggling, you
3 know, we need to -- and I have elevated it as best I can and
4 the infrastructure within the state is not able to either
5 support a program or maintain the staffing levels that are
6 needed to maintain a program, we would need to elevate that
7 up to the Commission for information and address those on a
8 case-by-case basis. I don't think as an MRB, we've come up
9 and said, well, you know, three years is okay and four years
10 is not. That's just one member of the MRB. But it's a very
11 legitimate question and we will certainly -- we can discuss
12 it on our next MRB meeting time frame, if we need to.

13 CHAIRMAN JACKSON: I think it's an important
14 question.

15 MR. THOMPSON: It is. It's very important.

16 COMMISSIONER DICUS: It's sort of like a plant
17 being on the watchlist.

18 CHAIRMAN JACKSON: I was going to say that, but I
19 didn't.

20 MR. THOMPSON: I wasn't going to say that either.

21 COMMISSIONER DICUS: It's very similar to that.

22 CHAIRMAN JACKSON: How long? Not long.

23 MR. THOMPSON: Not long.

24 MR. BANGART: Also in the Nebraska case, the team
25 did recommend a full IMPEP review within a year, and that's

1 currently scheduled.

2 Also for the Commission's information, especially
3 because of this heightened oversight that the staff is
4 exercising, we have recently learned in a very timely
5 fashion that the director of the Nebraska program has
6 resigned and upper management in that state is assessing the
7 impacts of that loss and how to manage those impacts, and we
8 expect to see that report in the next bi-monthly progress
9 report, which is actually due April the 1st. Rita Ford and
10 the Office of State Programs continue to work closely with
11 the State of Nebraska at this point in time.

12 Now on the next slide, if we roll out the results
13 of all of the reviews, we'll see the current status of all
14 regional and Agreement State programs. All regions are
15 currently rated adequate. The field work for the Fiscal
16 Year '98 reviews of Region I and II has been completed and
17 the teams will be recommending that the adequate finding
18 continue for those regional programs.

19 For the Agreement States, 21 are currently both
20 adequate and compatible. Eight Agreement States have
21 programs where improvement was needed either in the adequacy
22 or compatibility areas or both. Six of those eight
23 Agreement States will be reviewed this year, and in fact,
24 the on-site portion of the review has already been completed
25 for three of the six Agreement States that were planned to

1 be reviewed this year, and the teams will be recommending
2 for those three on-site reviews that are already completed
3 that the state be found adequate and compatible.

4 The two states that are not fully adequate and
5 compatible and not scheduled for a review this year are
6 scheduled for a review in Fiscal Year '99.

7 Now, to report timeliness, following the January
8 '97 Commission briefing on the IMPEP program, staff was
9 directed to improve the reporting of the IMPEP process.
10 Staff then initiated a number of actions that have led to
11 the improved timeliness of reporting. One action was to
12 more realistically assess the report timeliness goal.

13 Now the performance plan, the OSP operating plan
14 and the NMSS plan by reference to our plan now contain
15 performance measures shown on this slide.

16 Our goal is to issue 80 percent of all reports
17 within 104 days from the last day of the on-site review and
18 to assure that no report takes longer than 180 days to
19 issue.

20 Other actions that have led to improvement --

21 CHAIRMAN JACKSON: Now, I would ask you this
22 question. If I go back to the charts that I was looking at,
23 and Mr. Thompson told me to be on the lookout for an
24 improving trend, and you have a goal that, you know, no
25 report should take longer than 180 days, but you didn't

1 start out being much above that in the first place;
2 nonetheless, the Commission asked you to improve the
3 timeliness. It strikes me that one could ask whether the
4 180 days is sufficiently responsive to the Commission's
5 timeliness desires.

6 MR. BANGART: We originally started with a goal of
7 90 days with no exceptions, no allowance for any report to
8 be issued beyond that, and that was just, we found,
9 unworkable. There are program reviews that experience has
10 shown us where there is legitimate debate between ourselves
11 and the state in one case that we've had experience with or
12 in another, such as New Mexico, where we purposely chose to
13 have a meeting with department level managers within the
14 state program, and that process, that additional step, is
15 one that isn't normal, and that added to the period of time
16 in that particular --

17 CHAIRMAN JACKSON: I think you need to make a
18 decision about what issuing the report means and what the
19 separation is between writing the report based on what you
20 find when you do the IMPEP review and any follow on steps,
21 okay, that you might take, that rather than having a report,
22 that remains arbitrarily open until you take whatever steps
23 you decide, you know, you want to take additionally. You
24 have to decide what is the report, what goes into it, and
25 then you have a timeliness goal associated with that.

1 If there are additional follow-up steps or some
2 supplementary thing you might issue, you can talk about
3 that, but I think you need to go away and think about, you
4 know, that kind of an issue.

5 MR. BANGART: The state actually gets three
6 versions of the report. They get a draft report from the
7 team within 30 days. We get their comments back after
8 another 30 days. Those comments are incorporated into the
9 report and a proposed final then goes to Hugh and the
10 management review board for consideration, and then two
11 weeks after that, the report is up to Hugh for his signature
12 to go out.

13 CHAIRMAN JACKSON: Right. But then I've counted
14 60 plus two weeks.

15 MR. BANGART: It adds up to --

16 CHAIRMAN JACKSON: That's not 180 days.

17 MR. THOMPSON: One of the issues that we have is
18 the ability to schedule time for the boards to meet as well
19 as to have the Agreement State participation and to be able
20 to meet, and some of those have taken a good bit longer than
21 any of us would have desired --

22 CHAIRMAN JACKSON: I understand.

23 MR. THOMPSON: -- to be able to do. It's not --
24 but the thing that I think that is very valuable and the
25 ones I think that have been a significant improvement in the

1 program is the ability to let the state see the report,
2 respond back to it, and then participate at the meeting.

3 CHAIRMAN JACKSON: Yes. I understand exactly what
4 you're saying, but again, you know, justice delayed is
5 justice denied, and the issue becomes, you have information
6 that becomes outdated before you ever write a report, and it
7 strikes me that there are some opportunities, and all I'm
8 asking you to do is to think about those opportunities --

9 MR. THOMPSON: We'll do that.

10 CHAIRMAN JACKSON: -- relative to how much time a
11 state is given to review the report, you know, as well as
12 any internal reviews that we might do, and then this
13 question of what is the report, okay? And is it something
14 that is some evolving form or is it a report that has to do
15 with what you see at a given point in time. I mean, we do
16 inspections in other parts of our program and everyone
17 understands that there is a cut-off date as of, you know,
18 what period that report covers. There are things that may
19 happen after that cut-off date. But the report that deals
20 with what you found at that point is the report that you
21 have based on what you found at that point.

22 MR. THOMPSON: And we'll look at that. The
23 process that we have right now lets the report not be the
24 report until -- it's not soup until the MRB says it's soup.

25 CHAIRMAN JACKSON: Well, all I'm saying is you can

1 look at opportunities along the way to tighten up. That's
2 number one.

3 MR. THOMPSON: That's right.

4 CHAIRMAN JACKSON: And number two, being clear
5 about what the report is, okay? And in terms of how much
6 remains open and what the cut-off point is. And I'm
7 understanding due process, et cetera, with the states, which
8 is a very important part of it, and I understand, you know,
9 management review, which is also an important part of it.

10 MR. THOMPSON: Right.

11 CHAIRMAN JACKSON: But the point still remains at
12 point A, and point B is that your 180 days is not so
13 different than the number of days that the Commission was
14 looking at when it issued the SRM about timeliness.

15 MR. THOMPSON: That's right. And we will continue
16 to work on timeliness. My expectation is, after we have
17 gone through the states and they really understand -- one of
18 the real lessons learned, and I don't know whether Dick is
19 going to cover this one or not, but some of the states have
20 not gone through the process. The process is much more
21 rigorous, although it -- and focused in certain areas than
22 it had been in the past, and we identified things that, in
23 the programs in the past, had been acceptable, and I think
24 once people understand it, our process is going to be
25 easier, they're going to understand what the process is for

1 responding, and the initial process, some of those bugs will
2 be worked out and I think we'll have states -- a much more
3 timely response in most of the reports. That's my
4 expectation.

5 CHAIRMAN JACKSON: Okay.

6 MR. BANGART: I would agree. I think if you look
7 at this chart, that at least we see an improving trend.
8 This chart does display the time to issue the final report
9 for each review beginning with the inception of the program,
10 which was a North Carolina review in December of '95. The
11 ordinate from top to bottom lists each of the programs
12 reviewed in chronological order. The vertical line through
13 the approximate middle of the chart identifies our current
14 104-day goal. The arrow on the right is located at a point
15 that represents about January 1997. That's when the staff
16 discussed with the Commission the need to improve
17 timeliness.

18 The Commission and the staff concern about
19 timeliness is shown by the generally increasing trend from
20 North Carolina in Fiscal Year '96 through Tennessee in '97.

21 CHAIRMAN JACKSON: Have you done some kind of
22 regression analysis?

23 MR. BANGART: No.

24 CHAIRMAN JACKSON: Okay.

25 COMMISSIONER DICUS: What was different with the

1 Texas program? Why did it take so long.

2 MR. BANGART: I've got a statement in just a
3 second about that.

4 Of the ten reviews that have been completed since
5 the beginning of calendar year '97, seven were issued before
6 the 104-day goal. Of those three that were not, two did not
7 exceed the 180-day goal.

8 Based on -- and now I'll get to the Texas comment
9 -- based on the concerns expressed by the State of Texas
10 about the wording in the proposed final report, that middle
11 step that I mentioned, and because of direction from the MRB
12 itself, there was one section of the Texas report that was
13 rewritten, and we were asked to and we agreed to allow Texas
14 a second comment period on that revised text. So when that
15 additional step was added into the process, it ended up
16 causing us the 212 days to issue the report.

17 MR. THOMPSON: That's a complicating factor that
18 dealt with reviewing a program that was in the middle of a
19 licensing review on the low-level waste area and whether or
20 not the NRC comments could be clearly distinguished between
21 comments on the application and the comments on the program,
22 it was very important for us to be very clear that we were
23 discussing on the program and not on the license application
24 itself.

25 MR. BANGART: There are currently two regional

1 review reports and three Agreement State review reports that
2 are in the process of being prepared right now, and I think
3 both NMSS' expectation and our expectation for the Agreement
4 States reports is that each of those will be issued well
5 within the 104-day goal that we have.

6 CHAIRMAN JACKSON: Okay.

7 MR. BANGART: The last slide summarizes some of
8 the important lessons learned about the IMPEP program as a
9 result of the two-plus years of experience. First and most
10 importantly, it's effectiveness in assessing regional and
11 Agreement State programs has been proven. Feedback from NRC
12 regions, from Agreement States, from NMSS and my office all
13 attest to its effectiveness. This feedback comes from both
14 those conducting the reviews and those organizations that
15 are being reviewed.

16 The effectiveness is also confirmed by the fact
17 that program weaknesses, when present, have been identified
18 by this IMPEP process. This was demonstrated by the
19 Nebraska and New Mexico reviews.

20 Importantly, the credibility of the review process
21 has resulted in immediate initiatives in each of those
22 states to address the weaknesses that were identified.

23 Secondly, the --

24 CHAIRMAN JACKSON: Can you say, is there hard data
25 to say whether IMPEP has actually improved the performance

1 of the regions in the Agreement States versus just
2 heightening our awareness of the problem area?

3 MR. BANGART: I believe the former because --

4 CHAIRMAN JACKSON: Can you prove it?

5 MR. BANGART: I can convey to you the fact that in
6 some limited number of cases, the feedback that we have
7 received is that -- and it's actually made in a later point
8 here -- is that the way the program has been implemented or
9 the way we found it was being implemented was actually the
10 way it had been implemented for a number of years. So
11 really the criteria that we're using to judge each of the
12 performance indicators in some cases are different than the
13 criteria or criterion that have been used in previous
14 reviews. Well, we didn't have this more centralized
15 approach with definitive criteria or as definitive criteria
16 established in terms of performance, more prescriptive.

17 MR. THOMPSON: I think I would say for really
18 strong Agreement State programs, this probably was just a
19 confirmation those programs were really strong. It's for
20 the weaker programs where I think we have not only been able
21 to identify better the weakness, identify it, but also
22 identify the process by which the program can be improved
23 and by having identified either good practices at other
24 states which are available for them to adopt and utilize in
25 their programs or just being able to have the dialogue with

1 an individual at headquarters or in the regions who would be
2 able to provide input to strengthen those programs I think
3 has been helpful.

4 With respect to the regional programs, I think our
5 backlog has better identified and worked down and the
6 programs have been effective in being able to let us do
7 that. I don't know -- do you have any other things on the
8 NRC programs?

9 MR. COOL: With respect to the regional programs,
10 if you look at performance measures, the number of old
11 cases, the timeliness of issuing actions, the number of
12 overdue inspections, all of those indicators have improved
13 over the last three years. We have had a focused effort.

14 Can I attribute that to the IMPEP review or to
15 some of the other specific focuses because we were focusing
16 on these areas? I cannot give you a separation. You can
17 see an improvement in the key indicator areas over that time
18 period.

19 CHAIRMAN JACKSON: Do you track them
20 systematically?

21 MR. COOL: I track those performance indicators.
22 They are part of my operating plan, they're part of the EDO
23 level operating plan.

24 CHAIRMAN JACKSON: Okay.

25 MR. COOL: Yes, they are.

1 CHAIRMAN JACKSON: Thanks.

2 MR. BANGART: Second, the intent at the outset of
3 the program was to conduct IMPEP reviews and spend no more
4 direct FTE than was required to review regions and Agreement
5 States.

6 MR. THOMPSON: Two minutes to go.

7 MR. BANGART: Okay. Let me just quickly
8 summarize, then. We are spending exactly what we budgeted
9 to complete the IMPEP reviews. We have already talked some
10 about higher standards perhaps being applied to some
11 programs. But I will say that everybody agrees that it's
12 important that all regulatory organizations be reviewed
13 against the same criteria if we're going to achieve this,
14 what we're --

15 CHAIRMAN JACKSON: So when you say higher
16 standards, you mean what the standards are had not been
17 uniformly applied.

18 MR. BANGART: Yes. Yes.

19 CHAIRMAN JACKSON: Okay.

20 MR. BANGART: Yes.

21 CHAIRMAN JACKSON: I wanted to make sure I
22 understood you.

23 MR. BANGART: In some cases, the Agreement States,
24 for example, are continuing to conduct inspections more
25 frequently.

1 CHAIRMAN JACKSON: I understand.

2 MR. BANGART: So the program may be above or --

3 CHAIRMAN JACKSON: I understand.

4 MR. BANGART: -- below what our current standard
5 is.

6 CHAIRMAN JACKSON: You've put a standard --

7 MR. BANGART: But in some cases, and relatively
8 few, relatively isolated, it does mean a strengthening.

9 CHAIRMAN JACKSON: I got your point. Okay.

10 MR. BANGART: But everybody, like you say, agrees
11 that the same criteria should be used for all programs if
12 we're going to achieve this consistent, coherent nationwide
13 kind of approach to regulation of materials.

14 I mentioned that heightened oversight appears to
15 be pretty effective.

16 MR. THOMPSON: I would say on heightened
17 oversight, one of the lessons learned is that we need to be
18 very crisp on what heightened oversight means for our
19 interaction with the programs. The initial one, that we
20 weren't crisp on that and we had a program that didn't get
21 as much attention probably as it should have early on.

22 MR. BANGART: Hugh mentioned that at least in one
23 case, we did encounter a very controversial regulatory
24 action that was underway in one state, and the lesson we
25 learned there was we need to very carefully write the report

1 so that it's just factual and conveys only the message that
2 we intend.

3 We do each year send out a letter, again as Hugh
4 mentioned, that identifies good practices. One of the
5 Agreement State practices that we shared with everybody was
6 that North Dakota uses photographs during inspections and
7 they photograph facilities and operations that are ongoing,
8 and they then put those photographs in the file so that
9 they're there for a future reference for the next inspector.

10 The last point on ongoing improvements is just to
11 say that we do view the program as a dynamic one. We're
12 always looking for ways to improve it. At the end of each
13 review, we ask the region or Agreement State if they have
14 any thoughts about how it can be improved. At the annual
15 Agreement States meeting, we had a session on IMPEP and ways
16 that it might be improved.

17 One of those recommendations was that NRC consider
18 having the Agreement States conduct an IMPEP-like review of
19 headquarters' sealed source and device evaluation process,
20 and that's being actively worked between Don and his people
21 and the organization of Agreement States at this point in
22 time.

23 So with that, I'll close.

24 CHAIRMAN JACKSON: Thank you, Mr. Thompson.

25 Would you care to comment on any of the issues

1 that were brought up by the Agreement State representatives
2 in their briefing?

3 MR. THOMPSON: We'll probably address those. I
4 will start, I think, quite frankly, with the DOE one. I
5 think that's one that the Commission is well aware of, that
6 we do intend to include the Agreement State associated with
7 each of the pilot programs and incorporate that. There are
8 very important issues to the states, very important issues
9 to NRC, and we certainly intend to address those with the
10 Commission and put the states' positions forward on that,
11 and we'll certainly work with the Organization of Agreement
12 States on various issues in addressing their views in a
13 general context and in meetings so that the Commission has
14 the full -- as well as DOE and the Congress, because I think
15 this will be an issue that will obviously go before the
16 Congress, and those issues are ones which will be addressed.

17 If you need some more, we'll ask --

18 CHAIRMAN JACKSON: And on the communications
19 issues?

20 MR. THOMPSON: I'll let --

21 MR. BANGART: This is a subject that there's been
22 ongoing discussions between ourselves and OAS. As a matter
23 of fact, it was a topic at the last annual meeting in Los
24 Angeles. We did commit to try to reach some middle ground
25 on sharing information. Our office and Roland Fletcher and

1 OAS were working together on providing written guidance to
2 all Agreement States on where these lines should or
3 shouldn't be drawn in terms of sharing information, and I
4 think your suggestions to have further discussions with OI
5 and Office of Public Affairs will be a valuable contribution
6 to this ongoing dialogue.

7 MR. THOMPSON: In both of those, obviously we're
8 looking right now with our public information approach on
9 what the right time to put in information, and I think
10 that's a very valuable comment that we received.

11 With respect to the investigation activities,
12 those, as you are certainly well aware of, it's a process.
13 This agency had some difficulty getting the right balance
14 between not interfering in an investigative matter as well
15 as being part of it. I have talked with Guy Caputo, and I
16 think he will certainly be prepared to discuss with the
17 states.

18 I think, though, the fundamental issue is an
19 investigator's call, and it's consistent with all of our
20 federal investigative aspects. It's not to say that we
21 don't trust the states, it's not to say that OI doesn't
22 trust the NRC staff, or like the grand jury, you know, and
23 those things have a process of their own.

24 CHAIRMAN JACKSON: I think the important point is
25 just to have, as Mr. Bangart has already indicated, to have

1 OI and OPA sit down --

2 MR. THOMPSON: And we'll certainly do that.

3 CHAIRMAN JACKSON: -- and have these discussions
4 so that there is clarity.

5 MR. THOMPSON: I'm not sure everybody will be
6 happy, but I mean, we need to understand --

7 CHAIRMAN JACKSON: No. Well, happiness is what we
8 all strive for, --

9 MR. THOMPSON: Right.

10 CHAIRMAN JACKSON: -- clarity is what we must
11 achieve.

12 MR. THOMPSON: Right.

13 CHAIRMAN JACKSON: Commissioner? That was good,
14 huh?

15 [Laughter.]

16 COMMISSIONER DICUS: That was good. I won't say
17 anything.

18 MR. THOMPSON: And the winner of the bake-off
19 contest is --

20 [Laughter.]

21 CHAIRMAN JACKSON: Well, I would like to thank
22 each of you for the information that you provided in today's
23 briefing. Mr. Fletcher, the Commission would like to thank
24 you and your colleagues from the executive committee of the
25 Organization of Agreement States for your excellent summary

1 of the views. Additionally, let me thank the NRC staff for
2 your presentation. Very useful; always interesting.

3 We're adjourned.

4 [Whereupon, at 4:50 p.m., the public meeting was
5 concluded.]

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CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING BY ORGANIZATION OF AGREEMENT
STATES AND STATUS OF IMPEP PROGRAM
PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Thursday, March 31, 1998

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: May Carpenter

Reporter: Mark Mahoney

Roland G. Fletcher, Chair
Robert Quillin, Past Chair



Organization of Agreement States

Stan Marshall, Chair-Elect
Richard Ratliff, Secretary

NRC Commission Briefing

31 March 1998

► AGREEMENT STATE PERSPECTIVES ◀

Primary Topics: *Information Sharing ♦ DOE Contractor Regulation ♦ DOE Activity Oversight ♦ AEC/NRC Contaminated Site Responsibility*

Presented by:

**The Executive Committee
of the
Organization of Agreement States**

Roland G. Fletcher, Chair
Robert Quillin, Past Chair

Stan Marshall, Chair-Elect
Richard Ratliff, Secretary



Organization of Agreement States

◆ AGREEMENT STATE PERSPECTIVES ◆

Presented by: The OAS Executive Committee

OAS/NRC COMMISSION BRIEFING-31 March 1998

GREETINGS AND INTRODUCTION:

R. FLETCHER

DISCUSSION TOPICS

- ◆ IMPROVING COOPERATION, COMMUNICATION, INFORMATION SHARING AND PROFESSIONAL COURTESY BETWEEN REGULATORY PARTNERS R. FLETCHER

- ◆ REGULATION REQUIREMENTS OF DOE CONTRACTOR AND SUBCONTRACTOR ACTIVITIES (via telephone bridge) R. QUILLIN

- ◆ ROLE OF STATES, GENERALLY, AND AGREEMENT STATES SPECIFICALLY IN THE OVERSIGHT OF DOE S. MARSHALL

- ◆ AGREEMENT STATE RESPONSIBILITY FOR POTENTIALLY CONTAMINATED SITES FORMERLY LICENSED BY NRC/AEC R. RATLIFF

- ◆ POTENTIAL FUTURE DISCUSSION TOPICS R. FLETCHER

- ◆ CHAIRMAN, COMMISSION AND STAFF INVITATION TO ANNUAL MEETING R. FLETCHER

Roland G. Fletcher, Chair
Robert Quillin, Past Chair

Stan Marshall, Chair-Elect
Richard Ratliff, Secretary



Organization of Agreement States

INFORMATION SHARING BETWEEN THE USNRC & AGREEMENT STATES

Presented by:
Roland G. Fletcher - Maryland

COMMUNICATIONS INVOLVING INVESTIGATIVE ACTIVITIES

Early Agreement State Notification

Strict Information Control

Justified(?) Need for Investigation Integrity

Allegations

COMMUNICATIONS ON INSPECTION/ENFORCEMENT ACTIVITIES

Agreement State Guidelines from State Officials

Pre-Decision Media Involvement

COMMUNICATIONS ON SIGNIFICANT PUBLIC HEALTH & SAFETY

State Input Vital

Information Control, A Must

Wait for State to Lead

REGULATORY ISSUES
RELATED TO DOE
CONTRACTORS AND
SUB-CONTRACTORS

Robert Quillin
Colorado

OAS/NRC--RQ-1

DOE HAS UNDERGONE
ORGANIZATIONAL AND
MISSION CHANGES

DOE IS STILL
IN A STATE OF
TRANSITION

CONCEPT OF DOE
PRIME CONTRACTOR
IS NO LONGER
UNIVERSALLY VALID

COMMERCIAL REUSE
OF DOE FACILITIES
HAS BEEN ENCOURAGED

CURRENT DOE SUB AND
SUB-SUB CONTRACTORS
ARE LOOKING TO THE
DAY WHEN THERE WILL
BE NO DOE CONTRACTS

STATES ARE RECEIVING
INCONSISTENT MESSAGES
FROM WASHINGTON AND
FROM DOE SITES

**STATES ARE
FRUSTRATED!**

OAS/NRC--RQ-8

WHAT IS OUR ROLE?

OAS/NRC--RQ-9

ROLES OF STATES, GENERALLY, AND AGREEMENT STATES, SPECIFICALLY, IN THE OVERSIGHT OF DOE

- Privatization of the DOE complex and other considerations for alternative uses of the complex beyond the traditional missions of the DOE.
- Growing inconsistencies by evolving national objectives and changing legal interpretations.
- NRC Impact on 30 Agreement State Programs and 20 NRC State Programs.
- States have many years of experience with various levels of relationships with DOE.
- States challenged to ensure State public health mandates are met through this DOE transition.
- States and the NRC have a tremendous opportunity at hand.
- SOLUTIONS? --- YES!!!

**AGREEMENT STATE RESPONSIBILITY FOR
POTENTIALLY CONTAMINATED SITES
FORMERLY LICENSED BY AEC/NRC**

RICHARD RATLIFF, TX

- 1. History**
- 2. Legal Requirements**
- 3. Agreement State Funding Issues**
- 4. NRC/AS Solutions**

INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM (IMPEP)

MARCH 31, 1998

RICHARD L. BANGART, DIRECTOR
OFFICE OF STATE PROGRAMS



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

OVERVIEW

- **FY 1997 IMPEP Accomplishments**
 - **NRC Region and Agreement State Materials Program Findings Status**
 - **IMPEP Report Timeliness**
 - **Conclusions/IMPEP Program Experience**
-



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

FY 1997 ACCOMPLISHMENTS

- **Management Directive 5.6 Revision**
 - **Non-Common Performance Indicators**
 - **New Adequacy and Compatibility Policy**

 - **Annual Training Completed**
 - **Over 45 Participants from OSP, NMSS, NRC Regional Offices, and Agreement States**

 - **Timeliness of IMPEP Final Agreement State Reports Improved**

 - **2 Regional and 11 Agreement State Reviews Completed**
-



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

FINDINGS

- **Program's Ability to Protect Public Health and Safety**
 - Adequate
 - Adequate, But Needs Improvement
 - Inadequate

 - **Agreement State Program's Compatibility with NRC's Program**
 - Compatible
 - Not Compatible
-



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

IMPEP REVIEWS CONDUCTED FIRST HALF FY 1997

REGION/STATE	REVIEW DATE	RESULTS		DAYS TO ISSUE FINAL REPORT
		FINDINGS	NEXT REVIEW	
Louisiana	10/96	Adequate - Compatible	4 years	199
California	10/96	Adequate - Compatible	4 years	236
Tennessee	12/96	Adequate - Compatible	4 years	166
Mississippi	1/97	Adequate - Compatible	4 years	112
Colorado	3/97	Adequate - Compatible	4 years	94
Region IV	3/97	Adequate	2 years	91
Illinois	3/97	Adequate - Compatible	4 years	102



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

IMPEP REVIEWS CONDUCTED SECOND HALF FY 1997

REGION/STATE	REVIEW DATE	RESULTS		DAYS TO ISSUE FINAL REPORT
		FINDINGS	NEXT REVIEW	
Region III	4/97	Adequate	2 years	102
Texas	6/97	Adequate - Compatible	4 years	213
New Mexico	7/97	Adequate But Needs Improvement - Compatible	1 year	165
New Hampshire	8/97	Adequate - Compatible	4 years	95
Nevada	8/97	Adequate - Compatible	4 years	95
Nebraska	9/97	Adequate But Needs Improvement - Compatible	1 year	82



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

CURRENT STATUS OF NRC REGIONS

- All NRC Regions Currently Rated Adequate
 - Regions I and II Reviewed FY 96
 - Region III and IV Reviewed FY 97

CURRENT STATUS OF AGREEMENT STATES

- 21 Agreement States Currently Rated Both Adequate and Compatible
 - 8 Agreement States Not Currently Rated Both Adequate and Compatible; 6 Scheduled For Review in FY 98
-



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

REPORT TIMELINESS PERFORMANCE MEASURE

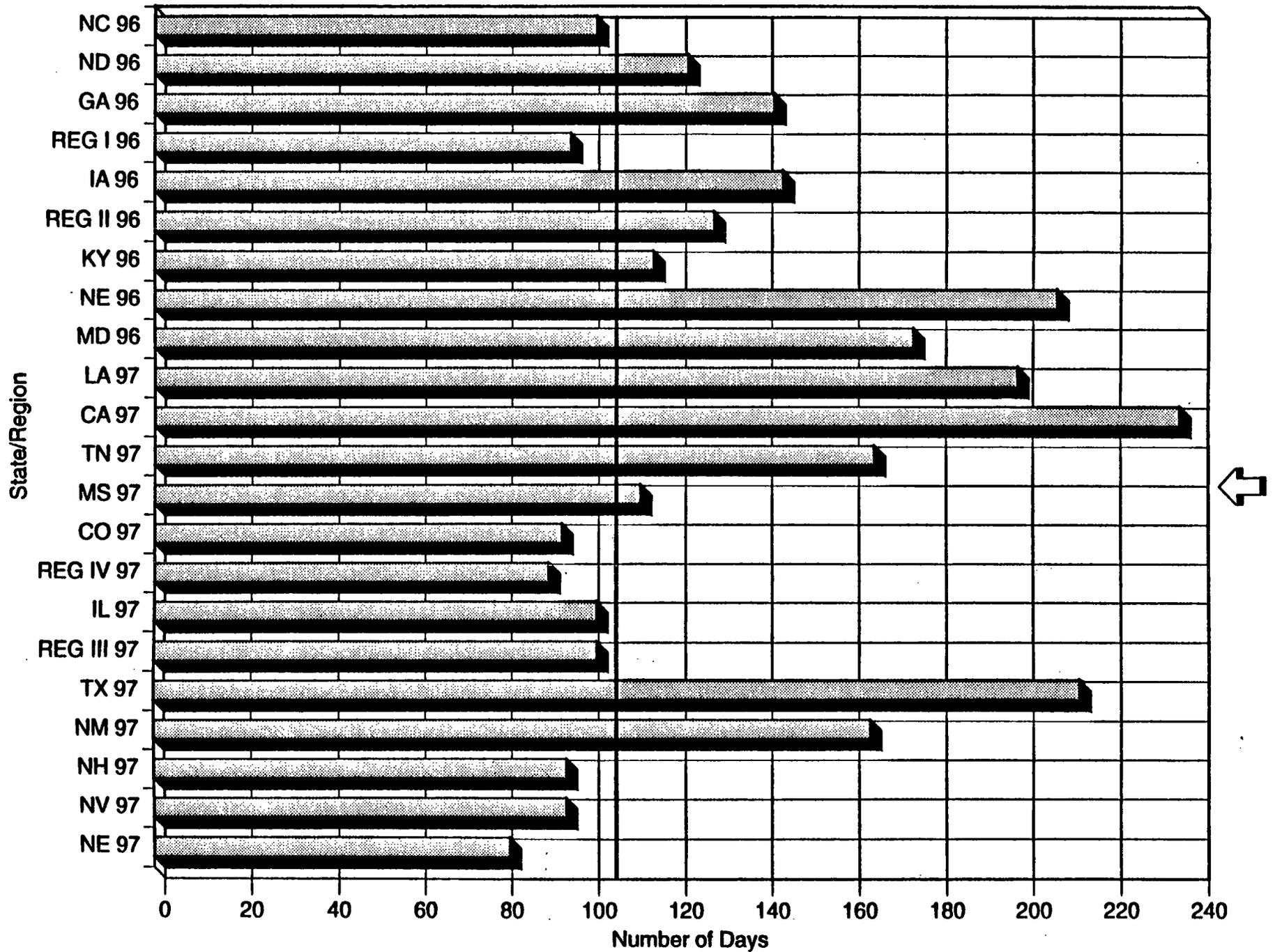
- Issue 80% of Reports Within 104 Days of On-Site Review
- All Reports Issued Within 180 Days of On-Site Review

ACTIONS TO IMPROVE TIMELINESS

- NMSS and OSP Memoranda Emphasize Priority
 - Team Sequestration For Writing Draft Report, As Needed
 - Management Oversight
-

IMPEP REPORT ISSUANCE TIME PERIODS

FY 96 & FY 97





INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

CONCLUSIONS/IMPEP PROGRAM EXPERIENCE

- Effectiveness Confirmation
 - Budgeted Resources Sufficient
 - Higher Standards Implemented
 - Probation/Heightened Oversight Flexibility
 - Sensitive Issues/Program Areas
 - Good Practices
 - Ongoing Improvements
-



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

February 10, 1998

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

FROM: L. Joseph Callan 
Executive Director for Operations

SUBJECT: SUMMARY OF AGREEMENT STATES' AND REGIONS'
RADIOACTIVE MATERIAL PROGRAMS STATUS AND
TIMELINESS OF INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM (IMPEP) REPORTS

On January 31, 1997, the staff briefed the Commission on the Integrated Materials Performance Evaluation Program (IMPEP). In a Staff Requirements Memorandum (SRM) dated February 21, 1997, the Commission noted that the staff committed to improve the timeliness of the IMPEP reporting and resolution process. The Commission directed the staff to report back to the Commission in one year on the steps the staff has taken to improve the timeliness of IMPEP feedback to Agreement States and Regions, and whether those steps have resulted in more rapid feedback.

Originally, the staff's goal was to issue the draft report for comment to the Region or Agreement State within 30 days of the exit meeting and to issue the final report within 90 days. In FY 96, no report was issued within 90 days. The elapsed time from exit meeting to issuance date ranged from 96 to 208 days. At the time of the Commission briefing, the reports for three IMPEP reviews conducted in FY 97 were not yet issued and more than 90 days had elapsed. Subsequently, an analysis of the steps within the report generation process revealed that reports were being significantly delayed in the preparation of the draft report due to higher priority work assignments and because of the need to allot more time for Agreement State review of draft reports. On February 10, 1997 and March 19, 1997, memoranda were sent by the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of State Programs (OSP) to team participants and their managers addressing the need for timely issuance of IMPEP reports. Team members and their management were informed of the IMPEP Program priority, the commitment of effort necessary for IMPEP, and the need for the allotment of sufficient time for team member participation. Separately, the timeliness goals for each step of the IMPEP report generation process were reviewed, the goal to issue the report was revised from 90 to 104 days to allow Regions and Agreement States 30 days to comment on draft reports, and after approval by the Management Review Board (MRB), all team members and their management were informed of the revised goals. In addition, portable computers and onsite meeting rooms were made available to facilitate the team's preparation of the draft report.

With the steps taken above, and increased management oversight of the IMPEP process, seven of nine IMPEP final reports for reviews conducted after February 1, 1997, were issued within 104 days. The two IMPEP reviews, New Mexico and Texas, have exceeded the 104-day goal because of the results of the review and special direction by the MRB. In New Mexico, the review team originally recommended probation for the program because of the significance of the findings. Extra time needed by the State of New Mexico to respond to the draft report, a special meeting of senior NRC and New Mexico management officials, at the direction of the MRB, and a second MRB meeting, resulted in an additional 49-day delay. In Texas, the State also required extra time to review the draft report. The MRB directed the review team to revise the low-level radioactive waste disposal non-common performance indicator text in the proposed final report to remove any unintended suggestions that the low-level radioactive waste site in Texas was not suitable based on the performance assessment. The MRB directed the staff to share the revision with the State for comment. These additional steps delayed issuance of the final report by 91 days.

Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Status as of January 1998. Findings for reviews conducted before December 1995, were based on the 1992 Policy Statement "Guidelines for NRC Review of Agreement State Radiation Control Programs" which was suspended in October 1995 and rescinded in October 1997. All reviews performed beginning FY 96 were conducted under Management Directive 5.6 (MD 5.6), "Integrated Materials Performance Evaluation Program." Depending on the State's performance, review cycles under IMPEP are up to four years. Attachment 2 is the Summary of Regions' Adequacy Status as of January 1998. Regions are reviewed under MD 5.6 every two years. Attachment 3 contains a FY 97 summary of the days to issue IMPEP reports against the 104-day goal. Attachment 4 is a graphical presentation of times to issue final IMPEP reports from the inception of the program in November 1995 to present. In the February 21, 1997 SRM, the Commission noted the staff had committed in the January 31, 1997 briefing to improve the IMPEP reporting process and requested staff to report back on whether steps taken to improve the timeliness of IMPEP feedback to Agreement States and Regions have resulted in more rapid feedback. The first IMPEP reviews were initiated in early FY 96. In comparing FY 96 with FY 97, staff believes the steps taken to improve timeliness in issuance of IMPEP reports have resulted in more rapid feedback in FY 97. This is graphically depicted in Attachment 4 where timeliness data for FY 96 and FY 97 are compared.

As a result of the Office of State Programs operating plan review by the Program Review Committee in early FY 98, the report issuance goal was further revised to an output measure of issuing the final report within 104 days of the review exit date for 80% of the reviews, with no report issued later than 180 days.

Attachments:
As stated

cc: SECY
OGC
OCA
OPA
CFO
CIO

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUS¹

January 1998

STATE	YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	1995	adequate	compatible
Arizona	1995	adequate	FW ²
Arkansas	1995	adequate	FW
California	1996	adequate	compatible
Colorado	1997	adequate	compatible
Florida	1995	adequate	compatible
Georgia	1996	adequate	compatible
Illinois	1997	adequate	compatible
Iowa	1996	adequate	compatible
Kansas	1995	adequate	FW
Kentucky	1996	adequate	compatible
Louisiana	1996	adequate	compatible
Maine	1995	adequate	compatible
Maryland	1996	adequate but needs improvement	not compatible ³
Massachusetts	1997 ⁴	adequate	compatible
Mississippi	1997	adequate	compatible
Nebraska	1996 ⁵	adequate but needs improvement	compatible
Nevada	1997	adequate	compatible
New Hampshire	1997	adequate	compatible
New Mexico	1997 ⁶	adequate but needs improvement	compatible
New York	1995	adequate	FW
North Carolina	1995	adequate	compatible
North Dakota	1996	adequate	compatible

STATE	YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Oregon	1996	adequate	compatible
Rhode Island	1994	adequate	compatible
South Carolina	1995	adequate	compatible
Tennessee	1996	adequate	compatible
Texas	1997	adequate	compatible
Utah	1994	adequate	compatible
Washington	1995	adequate	FW

¹The 1992 Policy Statement, "Guidelines for NRC Review of Agreement State Radiation Control Programs," was suspended in October 1995 and rescinded in October 1997. All reviews performed beginning FY 96 were conducted under Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Depending on the State's performance, review cycles under IMPEP can be as long as once each four years.

²Please note that "FW" indicates that the finding was withheld under the 1992 Policy Statement.

³By letter dated June 5, 1997, four regulations were identified under the 1992 Policy Statement as necessary to satisfy the regulation compatibility criteria.

⁴Massachusetts became an Agreement State on March 21, 1997, after being found adequate and compatible by the NRC.

⁵Nebraska's program was considered for probation, but as a result of commitments by State management, the MRB recommended heighten oversight without probation. A follow-up review was conducted September 1997, and the Nebraska's program remained adequate but needs improvement and compatible. Next IMPEP review is scheduled for September 1998.

⁶New Mexico's program was considered for probation, but as a result of commitments by State management and a meeting between NRC and the State's senior management officials, the MRB recommended heighten oversight without probation. A follow-up review is scheduled for July 1998.

SUMMARY OF REGIONS' ADEQUACY STATUS

January 1998

REGION	YEAR OF REVIEW	ADEQUACY FINDING
Region I	1996	adequate
Region II	1996	adequate
Region III	1997	adequate
Region IV	1997	adequate

IMPEP REPORT TRACKING FY 97

State or Region	Review Date Month/Year	Total number of days from review to release of final report Goal: 104 Days
LA	10/96	199
CA	10/96	236
TN	12/96	166
MS	1/97	112
CO	3/97	94
Region IV	3/97	91
IL	3/97	102
Region III	4/97	102
TX	6/97	213
NM	7/97	165
NH	8/97	95
NV	8/97	95
NE	9/97	82

IMPEP REPORT ISSUANCE TIME PERIODS

FY 96 & FY 97

