

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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INTEREST

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COLLEGIAL DISCUSSION OF ITEMS OF
COMMISSIONER INTEREST

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, December 17, 1990

The Commission met in open session,
pursuant to notice, at 8:30 a.m., Kenneth M. Carr,
Chairman, presiding.

COMMISSIONERS PRESENT:

KENNETH M. CARR, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

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

8:32 a.m.

CHAIRMAN CARR: Commissioner Remick?

COMMISSIONER REMICK: So soon?

CHAIRMAN CARR: Sure.

COMMISSIONER REMICK: One of the things that I've observed since being a Commissioner is from time to time actions we take or actions others take, for example court decisions that are related to our activities, I find that sometimes they're not factually interpreted in the media as I think they should be from a factual standpoint. I notice from time to time some of us do respond to letters to the editor and so forth.

I have a question in my mind just how effective that effort is. I was wondering what experience others of you have had in this type of thing. Is it something that is worthwhile to try to set the facts straight or is it bound to be interpreted that what we're doing is self-serving? I'd just appreciate any experience that any of the others of you have had in that area.

CHAIRMAN CARR: I guess my personal feeling is that you shouldn't let the record go uncorrected if it's a blatant error and you can do

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1 something to correct it. As I've traveled around,
2 I've tried to visit editorial boards. I would
3 encourage you all to do that when you go to a state
4 and, as I've done before, encourage you to visit the
5 governor's staffs and the governor's offices and
6 whatever to try to head off some of the impact.

7 My general feeling is that the major
8 press' editorial pages are reasonably educated and do
9 not make those kinds of errors. Most of those are
10 reprints of erroneous material that has been flooded
11 by somebody else, unfortunately. My personal opinion
12 is it never hurts to set the record straight.

13 COMMISSIONER CURTISS: I guess I agree
14 with that. I think as a general rule we do a more
15 effective job when we seek to, as a general rule,
16 explain to the public and of course the press that
17 watches us perhaps more closely what it is that we're
18 doing and the basis for doing it. I know we've
19 decided over the course of the last couple of years
20 that we're going to release SECY papers and vote
21 sheets and SRMs and so forth.

22 I guess my impression of that is that's
23 been somewhat successful, the effort to explain to the
24 public and the press in particular the basis for what
25 we do. The reports that I've seen as a result of that

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1 I think are more educated than they were before. They
2 understand to a greater degree what it is that the
3 staff has proposed in a SECY paper and what it is that
4 the Commissioners individually are thinking about and
5 what the collective decision is of the Agency.

6 I guess my -- when I see a press report
7 that I think is perhaps inaccurate or misleading or
8 isn't -- more often than not, I guess, it happens that
9 it's not fully cognizant of all the facts. Ken's
10 suggestion that you engage the press either by meeting
11 with the editorial boards or something that I do on
12 occasion, simply calling them and telling them the
13 recent report that you had on X I think overlooks a
14 particular point or key fact or something of that
15 nature, I generally find that the press, A,
16 appreciates that and, B, is fairly responsive to --
17 if there have been shortcomings in the coverage, I
18 find that forum to be an effective one, to follow-up.

19 But I do think the suggestion that where
20 we see coverage or reports or what have you that is
21 misguided, perhaps innocently, my feeling is that it's
22 better for us not to let that go and we ought to
23 follow up on it, respond and engage that forum because
24 it's a very important one, particularly in this town.

25 CHAIRMAN CARR: I think a lot depends, of

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1 course, on where it is and how much it's picked up and
2 that kind of thing because you're not going to get the
3 same kind of coverage that the first guy got. But I
4 thought the -- I was in Connecticut and read the Part
5 20 coverage up there. I thought that was very well
6 handled. At least what I saw I think was an AP
7 release that was picked up in the New London Day and,
8 of course, I thought it was very well done. So, I
9 think they did a good job on that one.

10 COMMISSIONER ROGERS: Well --

11 CHAIRMAN CARR: The old story, as Joe has
12 always said, you don't argue with a guy who buys ink
13 by the barrel, you know.

14 COMMISSIONER ROGERS: Well, if you can
15 confine it to a pure factual misunderstanding or
16 correction of a fact, I think that that's probably a
17 good thing to do. But to get into a dual, a letter
18 dual or something doesn't pay off, I think. If it's
19 a question of interpretation or motivation, I don't
20 think you can win that one at all. But if it's purely
21 factual, then I think it is worth doing. But if it's
22 a question of questioning our motives or
23 interpretation or anything else, I don't think you can
24 win by trying to defend against that, which leads me
25 to my old point, that I think it's very important to

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1 get out fast to the press with everything on what we
2 do to explain it fully and try to anticipate questions
3 or areas of possible misunderstanding or
4 misinterpretation before there is an opportunity for
5 that to take place.

6 I keep on the back of my desk a quote from
7 Jonathan Swift that says, "Falsehood flies while truth
8 comes limping after." Get out there with the truth
9 first because the first impression is very often the
10 lasting impression, even if it's wrong.

11 CHAIRMAN CARR: The one that continues to
12 puzzle me is the BRC reception in the world and the
13 fact that it's become a states rights issue and
14 there's nothing in the policy statement that mentions
15 anything about states. I can see -- as I say all the
16 time, I can see why they might disagree with the
17 numbers in the policy but I can't see why they'd
18 disagree with the policy per se. So, we've got a lot
19 of work to do in that area.

20 COMMISSIONER REMICK: BRC is one of the
21 examples I had in mind because I think there's a case
22 where the Commission tried to get the facts out so
23 there would be some understanding.

24 COMMISSIONER ROGERS: Yes.

25 CHAIRMAN CARR: I think we were a year

1 behind though.

2 COMMISSIONER REMICK: That could be.

3 CHAIRMAN CARR: It took so long to get it
4 out that the other side decided they were going to
5 tell us what was in it before we got it out.

6 COMMISSIONER REMICK: Well, I appreciate
7 that information.

8 CHAIRMAN CARR: Anything else?

9 COMMISSIONER REMICK: One other item.
10 It's been a little over a year now that I've been a
11 Commissioner and I would just like to share some
12 thoughts.

13 One, I have been particularly pleased and
14 gratified by the acceptance on the Commission by all
15 of you. I greatly appreciate that. Also, the
16 acceptance by the staff. That's been particularly
17 gratifying to me. We certainly differ from time to
18 time in our views, but it's always been respectfully
19 and professionally and I really appreciate that.

20 Another thing that I do appreciate is how
21 well our staff has worked together. I think that has
22 been very, very beneficial to me knowing that the
23 staffs are working together and trying to find the
24 good decisions. So, I look back on the year and it's
25 been a very interesting and one that I've enjoyed more

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1 than I anticipated before coming on. So, I'd like to
2 share those views with you.

3 That's all I have.

4 CHAIRMAN CARR: Hope you can say the same
5 thing next year.

6 COMMISSIONER REMICK: I hope so too. I
7 hope so too.

8 CHAIRMAN CARR: Commissioner Curtiss?

9 COMMISSIONER CURTISS: Actually, I don't
10 have anything on my list today.

11 CHAIRMAN CARR: All right.

12 COMMISSIONER CURTISS: Things seem to be
13 going well in my perspective.

14 CHAIRMAN CARR: Commissioner Rogers?

15 COMMISSIONER ROGERS: The thing I thought
16 we might talk a little bit about is the principles of
17 good regulation. We put those into our five year
18 plan. I noticed recently that they have been picked
19 up by some of the regional administrators and actually
20 have had meetings with some of their staffs on the
21 principles which I thought was very good and very
22 interesting. It seemed to me that we might talk a
23 little bit about how to use those and promulgate them
24 a little more visibly within the organization. They
25 are a high level statement of what we believe in. We

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1 all subscribe to them, all had a part in putting them
2 together. I wondered if you had any thoughts on how
3 we might try to use them.

4 I think if we just leave them in the five
5 year plan and don't do anything more with them, I
6 think a good deal of their value will have been lost.
7 They are not specific. They are general statements
8 of what we believe should guide us. I think that they
9 ought to get a little more visibility and I'd like to
10 see if we could talk about that a little bit.

11 COMMISSIONER REMICK: I have a couple
12 thoughts on that. I share that view and I've asked
13 my staff to make sure that we keep them handy when
14 giving a talk or something to perhaps incorporate them
15 with that or when we're taking action in the office
16 to keep those in mind.

17 On several recent occasions when I've been
18 out with utilities, I've mentioned the fact that we
19 have principles and they look very surprised or not
20 aware of them because they're usually tell us about
21 their professional things.

22 CHAIRMAN CARR: They think we're
23 unprincipled here, huh?

24 COMMISSIONER REMICK: No, they're just
25 surprised that we've done something like that. And

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1 I thought it would be nice if I had a nice little one
2 page or even smaller, in card form, like many times
3 they're able to give to me as a demonstration of what
4 they've done in this area. They say, "Here are our
5 principles that we've agreed upon." So, I thought it
6 would be nice to have something like that just to give
7 an example, other than telling them that we have them
8 and giving an overall idea. I've never had anything
9 to specifically share with them.

10 But I agree. I think there's things that
11 we should keep more or less in front of us. I keep
12 on my desk, I have for some years, something I think
13 I got from Duke Power Company, a little card. It's
14 entitled, "Professionalism," and it's a very brief and
15 I think excellent description of what they interpret
16 professionalism to be. It would be nice maybe to have
17 those principles of good regulation on a little card
18 too that one could keep handy because it's good to
19 remind oneself. Even when we're making decisions,
20 it's helpful.

21 COMMISSIONER ROGERS: Well, let me just
22 offer some thoughts of how they might be used and see
23 if you might have any comments on them. It seems to
24 me that they could be used as guidance for new
25 employees in a regular way, that senior management

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1 could use them in briefing their staffs. We could
2 think about after everyone understands them and is
3 familiar with them and not until then think about them
4 as in some form of a poster that would be in NRC
5 offices. I've seen these principles of
6 professionalism as posters in many nuclear plants that
7 I've visited. I don't know why we couldn't have
8 principles of good regulation in the regulatory
9 offices, if we really believe in them.

10 They could be looked at by each of the
11 major functional areas of the organization and then
12 each of those could try to develop an implementation
13 or some kind of guidelines for their own activities.
14 Research has already really done that because they had
15 a principles of research or research philosophy that
16 they were urged to develop by their Research Oversight
17 Committee. That was, in fact, going on -- that
18 preceded our development of the principles of good
19 regulation. I've examined that Research policy and
20 our principles seem to be very consistent with it.
21 I don't think there are any inconsistencies there.
22 So, they've already done it.

23 We could think of incorporating them into
24 training programs in some way and we could try to
25 track them to see are they being used, where are they

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1 being used? I know that some of the -- as I say, some
2 of the regional offices have picked up on them and
3 have been using them really as they are without any
4 modification. It seems to me they ought to be stable
5 for some time, otherwise what are they? But
6 nevertheless, they should be subject to modification
7 after we've had some experience and seen whether
8 either they don't say what we really think they should
9 say or whether they should be modified.

10 And then if we did ever decide to have the
11 major functional areas develop some guidance for their
12 own activities in interpreting the principles, then
13 those could probably be consolidated into a single
14 document sometime that would give a more overview of
15 how they guide the entire organization.

16 But these are just some thoughts.

17 CHAIRMAN CARR: Any other comments on that
18 one?

19 COMMISSIONER REMICK: No, I think they're
20 good ideas.

21 CHAIRMAN CARR: Personally, I'm always at
22 a loss to try to take something like that and put
23 deadlines on it and say, "Here's what I'm going to do
24 with it," and get my teeth into it.

25 COMMISSIONER ROGERS: Oh, yes. Yes.

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1 Sure.

2 CHAIRMAN CARR: It's one of those things
3 that's very hard to just run with. But I think that's
4 a good suggestion and we certainly ought to consider
5 it.

6 COMMISSIONER ROGERS: Well, it seems we
7 want to keep them alive and not let them just get
8 buried in the stack of material on the shelves that
9 never sees the light of day again.

10 CHAIRMAN CARR: I'd subscribe to that.

11 Anything else?

12 Well, I've got a couple of things. The
13 first thing I would like to acknowledge is the staff's
14 effort on revised Part 20. I thought they did a good
15 job on that. Training and dissemination is going to
16 be the important part. I talked to the New England
17 Radiation Group. They were surprised that -- I'd
18 finally kept saying, "We're going to get it out this
19 month," and this month we did. So, they were looking
20 forward to it.

21 The staff's already got a good course of
22 action, I think, and coordinated plan. So, I'm
23 looking forward to getting that done.

24 The other thing I'd like to acknowledge
25 and congratulate you all on was the combined federal

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1 campaign. With things like they were, everybody
2 expected that there could be a decrease in the
3 charitable effort this year. Instead, every office
4 in the NRC exceeded 100 percent of their goal and did
5 a great job. So, it's interesting that people are
6 caring and I think we'll exceed last year's donation
7 even though our goal this year was under last year's
8 donation. So, I'm proud of the organization for doing
9 that.

10 I'm still waiting for an answer from EPA
11 on our establishment of our high-level group, but I
12 keep phoning and I'll keep pushing that until we can
13 get that going. The second building is -- I guess
14 we're down to the point where we're either going to
15 have to fish or cut bait. We've got to get something
16 moving. So, that's moving too. I hope it's moving
17 in the right direction.

18 Other than that, I would like to ask you
19 to all give some thought on where do we go from here
20 on the BRC issue and try to -- as you know, there's
21 legislation initiated in the last Congress on the Hill
22 and probably be reinitiated this year I guess to
23 rescind the policy or to negate it or do something,
24 which seems -- I think we're hardly worth legislation,
25 but the policy doesn't have any teeth in it until we

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1 try to enact it on something. So, we ought to do an
2 educational job up there if we can do it, at least to
3 tell them what the purpose of the policy is and why
4 we need it.

5 So, I encourage you, if you've got an
6 opportunity, to talk to the staff or to the
7 Congressmen themselves to help out on that.

8 COMMISSIONER ROGERS: What do you see as
9 the first application of that policy?

10 CHAIRMAN CARR: Well, I think we've got
11 three petitions in already. We had two -- I think we
12 had all three of them in perhaps when the policy was
13 put out. So, we haven't received any petitions since
14 the policy was put out. So, those will be -- probably
15 the first application will be action on those
16 petitions. So, I guess those are the first three
17 cases.

18 COMMISSIONER ROGERS: I wonder if there's
19 anything there that might, in our decision on
20 anything, would illustrate how that policy really is
21 supposed to work? There's nothing like a concrete
22 example, the --

23 CHAIRMAN CARR: Oh, I think you could take
24 those. I think they're in the medical area.

25 COMMISSIONER ROGERS: Well, it would seem

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1 to me that if there is something that we're more or
2 less ready to move on that we could deal with under
3 the BRC, that it would be a good idea to do that and
4 get it out and get it on the record because there's
5 nothing that will dispel a misconception about
6 something as an actual fact. That is, if we actually
7 take some action on something, that will illustrate
8 at last in that particular area what we were really
9 talking about.

10 CHAIRMAN CARR: That's a good point.

11 COMMISSIONER CURTISS: I think that's
12 generally true. But one of the frustrating parts
13 about what I see happening on the Hill -- well, a
14 number of things, but let me just comment on a couple
15 of things that I think are happening.

16 I don't think the policy is well
17 understood in some respects. For example, it is not
18 well understood that this policy statement is what
19 I'll call a two-edged sword. It serves as the basis
20 for providing or granting exemptions for practices
21 that we deem to be below regulatory concern. That
22 aspect of it is probably well understood. In fact,
23 that's been the most controversial part of it. I'll
24 get back in a minute to what I see as the component,
25 at least from what I see as the Hill's perspective,

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1 is driving the engine down there perhaps to a greater
2 degree than any other.

3 But the other side of the policy that
4 isn't well understood and perhaps that we ought to
5 focus on right out of the blocks and implementation
6 is that this policy statement with the risk levels
7 established in it provides the basis for going back
8 and looking at the exemptions that have been granted
9 in the past. I guess in my view, with the potential
10 that we could determine that exemptions that we had
11 granted in the past might not meet the risk levels
12 that we established in the policy and may need to be
13 revisited or, at a minimum, that we need to have
14 additional information on some of the policies, some
15 of the exemptions that have been granted in the past.

16 I recall when we went up to the Hill, I
17 had an opportunity to take a look at the numbers on
18 some of the previous exemptions. If you take a look
19 at thorium mantles, for example, or smoke detectors,
20 one could argue, I think, that those are the ones that
21 at least ought to benefit from additional information.
22 And maybe it's that aspect of the policy that we ought
23 to focus on first, that this policy could indeed
24 provide the basis for reevaluating some of the
25 exemptions that we issued in the past, because the

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1 congressional initiative that right now is focusing
2 on rescinding the policy statement I guess leaves me
3 personally in a quandary.

4 We end up, I guess, with the underlying
5 authority in the Atomic Energy Act to make these
6 decisions. That's not being taken away in any of the
7 legislation that I'm aware of, but the legislation
8 would take away the policy statement that we've issued
9 most recently and in the case of the Senate bill the
10 policy statement that was issued in '86 that seeks to
11 bring some discipline to bear on the decisions that
12 we render in this area.

13 As a consequence, I guess the upshot of
14 that is we're left with the underlying authority, but
15 with a congressional directive that we ought not to
16 implement that authority in any disciplined way.

17 CHAIRMAN CARR: On a consistent basis.

18 COMMISSIONER ROGERS: Yes.

19 COMMISSIONER CURTISS: That's why I say
20 it's kind of a quandary in terms of the result.

21 Let me say something about what I guess
22 I see driving the congressional initiatives, and this
23 is an issue I know on which I've differed with the
24 approach that the policy statement takes. I do think
25 that the steam that's driving the engine on the Hill

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1 is the question of state compatibility and states'
2 rights. And if there is anything that in our area
3 probably gets the --

4 CHAIRMAN CARR: Where the policy statement
5 is silent.

6 COMMISSIONER CURTISS: Yes. It probably
7 gets the juices flowing quicker than any in the
8 nuclear area. On the Hill, it's the question of state
9 authority. And of course, we saw that on the Senate
10 side when, in the context of the debate on the Clean
11 Air Act Amendment when we saw really two, I guess,
12 litmus tests of where at least the Senate would come
13 down on that issue when Senator Simpson offered the
14 amendment to address the Clean Air Act authority that
15 gives the states as well as EPA the authority to set
16 standards. In the first version of that, which would
17 have taken away the states' authority, that went down
18 to defeat on a vote of about two to one, 60 to 30 or
19 something of that magnitude.

20 The second amendment, focusing just on the
21 federal question and preserving the state authority,
22 the vote was just the opposite with EPA authority
23 addressed on a vote of about two to one but with the
24 state authority preserved.

25 I guess, based upon what I see and hear

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1 in terms of the initiative both on the House side and
2 the Senate side, I do think the state authority
3 question is the one that has the potential for firing
4 the engine, if you will, of the legislation next year.
5 The bill on the House side went through the House
6 Interior Committee without a subcommittee mark-up and
7 without any objection from either side of the aisle
8 and, I think, using the hearing that we attended as
9 a platform primarily on the basis of the state
10 authority question.

11 Similarly, on the Senate side where
12 Senator Mitchell has introduced the bill, he's been
13 a big proponent of state authority in this area as
14 well as others on environmental legislation. I think
15 that bill has a real prospect of moving in the Senate,
16 again with the state authority question being the one
17 that the proponents of that legislation will use to
18 advance it.

19 A couple of comments. I do think that
20 while the policy statement itself is silent on the
21 state authority question, the perception has arisen
22 that when the actual implementation of the policy
23 statement comes to pass and when we focus on specific
24 exemptions that would be granted under that policy
25 statement, I think there's a feeling -- and in some

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1 respects I think it's an accurate one -- that we would
2 consider those actions to be matters of compatibility
3 from a health and safety perspective.

4 States could come in and take whatever
5 action they wanted based upon the traditional economic
6 grounds that they have the authority to address, but
7 a combination I think of the policy statement and the
8 questions and answers and the communications that
9 we've sent to the Hill and others, I think, has led
10 to a perception that is in some respects an accurate
11 one, that the states will find themselves preempted
12 on compatibility grounds in the health and safety
13 arena at least. Whether that's entirely true or
14 whether the Commission at that time would actually
15 treat a specific exemption that way or not, I guess,
16 is something that I don't want to speculate on here
17 at this point. But, as with so many issues like this,
18 perception is what's going to drive the reaction down
19 at the Hill.

20 My real fear, I guess, with the
21 legislative initiative, given the posture that we're
22 in, is that it will address not only this
23 compatibility question and, as both the bills do,
24 allow the states to make determinations on health and
25 safety grounds notwithstanding whatever exemptions the

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1 Commission might grant, which is a position that in
2 the low-level waste arena I have supported. But
3 beyond that, as we've seen with legislative
4 initiatives in the past, that legislation once it gets
5 rolling may get into other areas. It may, as both
6 bills do, rescind the policy statement that we've just
7 issued; as the Senate bill does, rescind a previous
8 1986 policy statement; as the House bill does, the
9 Rahall Amendment, require the states to be notified
10 before any waste is disposed of.

11 There are other pernicious consequences,
12 it seems to me, once you get the legislative train
13 rolling and I have, I guess, a real concern that,
14 notwithstanding the debate that we've had -- and I
15 think it's been a good one -- on the compatibility
16 question, that unless there is some way to address the
17 concerns, in part perceived and part real, that are
18 driving the legislative train down on the Hill, I
19 think we face the very real prospect at the beginning
20 of the next Congress that this policy statement and
21 our ability to implement it effectively, not just in
22 the low-level waste arena which has been the focus of
23 a lot of the discussion, but in the other areas like
24 the decommissioned sites in particular, but consumer
25 products and so forth, that we may find ourselves

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1 constrained to a much more significant degree than we
2 might if we were to take the initiative early on and
3 try to respond to those concerns that seem to be
4 driving the legislation.

5 I do think the state authority one is the
6 one that is driving that train, I'll be honest with
7 you.

8 CHAIRMAN CARR: It's interesting, the low-
9 level waste form I read the other day where they were
10 talking about the standard manifest, you know.
11 Everybody seemed to agree with that, but the State of
12 Illinois would not agree to a common manifest. They
13 wanted to retain their independence to decide what the
14 manifest would look like when it go into Illinois.

15 COMMISSIONER ROGERS: A couple of
16 questions. One is, do you think, Jim, that the real
17 concern is in the low-level waste area on this or do
18 you think that it extends into other health areas as
19 well? For example, the decommissioning area.

20 COMMISSIONER CURTISS: Well, I do
21 think --

22 COMMISSIONER ROGERS: As far as state --

23
24 COMMISSIONER CURTISS: -- the concern that
25 we've seen is primarily one that arises in the low-

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1 level waste arena and for a combination of
2 circumstances. I guess just looking at the letters
3 that come across my desk and the comments and so
4 forth, the question that comes up more often than not
5 is could a compact or individual state require the
6 waste that we might declare to be BRC, require that
7 waste to be disposed of in their compact site rather
8 than what would otherwise be, I guess, an option to
9 dispose of it in an unlicensed facility.

10 CHAIRMAN CARR: I think the answer to that
11 is yes if they do it on any grounds but health and
12 safety.

13 COMMISSIONER CURTISS: I do think that's
14 what we've said so far.

15 CHAIRMAN CARR: I told them the other day,
16 if you want to do it on strictly financial grounds,
17 that's fine. If you say you've got to do it to make
18 your -- that's all right.

19 COMMISSIONER CURTISS: I think what's
20 driving the concern on the Hill is the health and
21 safety question. I do think there are areas in which
22 the Hill has been very supportive, or aspects.
23 Chairman Carr testified before Synar's subcommittee
24 on the House side and in the decommissioning area.
25 We've gotten, I think, strong entreaties to move

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1 forward with this so we can get on with the clean-up
2 of the sites that were the subject of that hearing.
3 I'm just very fearful that the controversy that has
4 erupted and I think will continue to erupt over
5 implementation of this policy in the low-level waste
6 arena on the health and safety grounds, whether it's
7 accurately being perceived or not, I think has the
8 potential for the Congress picking up where they left
9 off last session with the legislation moving very
10 quickly.

11 CHAIRMAN CARR: Well, it's unfortunate the
12 people who know most about it in the states, like the
13 Conference of Radiation Control Program Directors, the
14 people who support it and know what it means and who
15 knows why we need it, my general feeling is that the
16 reason it gets so much play on the Hill is it's front
17 page news always. When you take it on and you take
18 it on under the flag of states' rights, you can't help
19 but be on the right side. Unfortunately, the troops
20 out there that we should muster for support haven't
21 mustered yet.

22 COMMISSIONER ROGERS: Well, you know, my
23 impression is that, just seeing this thing evolve, the
24 original concern of the states was really not health
25 and safety, it was the financial viability of those

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1 disposal sites that they've been planning and working
2 on, that BRC looked like it was going to pull the
3 financial rug out from underneath those compacts.

4 CHAIRMAN CARR: I think that's still their
5 concern, but you fight it any way you can. That's the
6 way the game is played.

7 COMMISSIONER ROGERS: So it's not such a
8 pure health and safety issue as one might claim, that
9 it really was how on earth are we going to make these
10 things economically viable if the main source to
11 sustain them can be put in the local dump? That
12 seemed to me the first reaction to this when we were
13 talking about it several years ago that I detected at
14 the states' level. It's been converted into a health
15 and safety issue, but it really started out, as far
16 as I can see, as an economic issue.

17 COMMISSIONER CURTISS: Well, I don't --

18 CHAIRMAN CARR: I don't think we'll solve
19 it here.

20 COMMISSIONER CURTISS: I don't know what's
21 driving the states. I do think from some of them that
22 I've talked to that there is a health and safety
23 concern. What I guess I'm expressing here is that we
24 can, I think, discuss these kinds of questions. But
25 what I'm conveying, I guess, from my perspective is

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1 a very real political situation that I think we face
2 on the Hill. Regardless of what kind of debate goes
3 on here, the fact is that the one committee that's
4 taken this bill up voted it out unanimously without
5 anybody making the argument on either side.

6 COMMISSIONER ROGERS: Yes.

7 COMMISSIONER CURTISS: It just seems to
8 me that out of the concern that the --

9 CHAIRMAN CARR: I guess the question I
10 got, is that our fault or their fault?

11 COMMISSIONER CURTISS: As I say, I'm not
12 going to attribute perception versus reality in
13 relative degrees, but it does seem to me that unless
14 we have something in mind to try to turn that around
15 between now and January 20th when they come back and
16 probably reintroduce this bill, there is a very real
17 prospect in my view that the legislation, A, will
18 proceed; B, will address the compatibility question,
19 the manner that they've started -- that both bills
20 propose; and C, and this is a concern that I share
21 probably more than any other, that it will result in
22 sort of a spin-off effect in other areas, ranging from
23 negating the policy statement altogether to negating
24 the 1986 policy statement, and maybe even to getting
25 into a debate more generally on the state authority

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1 question.

2 The recent experience we've had on that
3 point, the Clean Air Act Amendment, at least in the
4 Senate, leads me to conclude that that's a weak ground
5 on which to argue our case.

6 CHAIRMAN CARR: I agree with you. That's
7 why I threw it on the table. But as you say, unless
8 we do something between now and the time they
9 reintroduce it -- what I'm trying to figure out is
10 what's the best thing to do?

11 COMMISSIONER CURTISS: What I would do -
12 - I had not intended to propose this until we get into
13 the discussion on the implementation plan that's up
14 here before us, but let me make a suggestion. I
15 recognize that the policy statement itself does not
16 constitute a legally binding position on the question
17 of compatibility and, in fact, in some respects does
18 not even address the compatibility issue.

19 Ken, you and I talked about that in our
20 additional views and that may be one of the reasons
21 that it's being discussed now. I think it would be
22 to our advantage between now and when the Congress
23 comes back if we were to clarify in a forceful way
24 that we do not intend that this policy statement and
25 the decisions issued in the low-level waste arena,

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1 granting exemptions, would constitute matters of
2 compatibility. To clarify today that if we were to
3 grant an exemption for a particular waste stream, that
4 reflects our best technical judgment as to what we
5 think applying the principles in this policy statement
6 ought to be done from a technical standpoint. But if
7 the states and the compacts that have the authority
8 and the lead responsibility to develop these sites
9 nevertheless think that they want to put that waste
10 in a licensed facility, whether it's for economic or
11 health and safety grounds, they're free to do so and
12 that this policy statement and the individual
13 exemptions that would be granted pursuant to that
14 would not be considered matters of compatibility.

15 Now, I don't know whether that would take
16 the steam out of the engine down on the Hill. To the
17 extent that that steam is driven or a result of the
18 state authority question, it may well do that.

19 CHAIRMAN CARR: But some of those
20 exemptions you might want to make a matter of
21 compatibility. It might be a health and safety
22 problem that would require it to be a matter of
23 compatibility, as a minimum.

24 COMMISSIONER CURTISS: I guess
25 theoretically, I can't envision a situation now where

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1 a state that wanted to put a deregulated waste stream
2 or a waste stream that's granted an exemption. If the
3 option were to put it in an unregulated landfill,
4 sanitary landfill, or a licensed low-level waste
5 disposal facility, just in hypothetical terms it seems
6 to me that the licensed facility would, in all cases,
7 provide more protection.

8 Now, we may say that in implementing the
9 policy statement that we don't think that's a sound
10 technical thing to do and from the standpoint of the
11 application of the numbers in the policy statement we
12 think that waste stream warrants and exemption. But
13 for a state that wanted to come in and say, "On health
14 and safety grounds we disagree with the Commission and
15 we'd like that waste to go into our licensed low-level
16 waste facility," which the states are developing --

17 CHAIRMAN CARR: Oh, I'm looking at it the
18 other way. If I go and say the Coleman lanterns
19 suddenly are a health and safety problem and I say
20 those should be disposed of in a low-level waste
21 facility, but it's not a matter of compatibility and
22 the state says, "I've been throwing them away for
23 thousands of years and I'm going to keep throwing them
24 away," I don't want them to do that if I decide it's
25 a health and safety problem. I want them to put it

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1 in a low-level waste facility.

2 COMMISSIONER CURTISS: Let me be clear
3 here. I think you can make a sound argument that this
4 approach to compatibility is one that derives from the
5 Low-Level Waste Act itself where the states were given
6 that authority and therefore should be and could be
7 limited to the Low-Level Waste Act. The other areas,
8 consumer products, decommission sites and so forth,
9 don't have that same sort of legislative underpinning
10 and I wouldn't -- as I said in my additional views,
11 I would not take that approach to compatibility for
12 those activities that fall outside of the Low-Level
13 Waste Act. But my own personal view is that the Low-
14 Level Waste Act provides a unique opportunity for the
15 states, subject to minimum federal standards, to carry
16 out their responsibilities. I think on that basis you
17 could limit the application of this compatibility
18 principle to that arena.

19 CHAIRMAN CARR: As you lawyers would say,
20 that's a narrowly drawn point and I haven't given it
21 enough thought yet. You may be right.

22 COMMISSIONER CURTISS: Let me turn it
23 around. The consequence of the legislation moving,
24 if in fact the Congress takes the position that BRC
25 generally ought to be a matter that the states can set

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1 more stringent standards on, the Senate bill, as I
2 read it, would permit the states to do that in all
3 four areas covered by this policy statement. That's
4 the consequence of legislation that opens up a
5 pandora's box like this.

6 I'm not sure in a legislative context we
7 can make the very artful distinction that we're
8 discussing here. Congress is going to see the
9 compatibility question as one that arises under BRC
10 and I think the distinction between consumer products
11 and decommission sites and recycle and low-level
12 waste, which are the four areas covered, is one that's
13 going to get lost in the pell-mell rush to pass
14 legislation giving the states the authority. That's
15 one of the very, I think, compelling reasons that may
16 auger in favor of trying to address that issue here
17 before that train starts rolling next year.

18 CHAIRMAN CARR: Well, let me suggest we
19 give this some thought because we've obviously got
20 work.

21 COMMISSIONER ROGERS: Is there any
22 precedent for legislation negating a policy statement?

23 MR. PARLER: Not in the nuclear area that
24 occurs to me right now.

25 COMMISSIONER ROGERS: In any other area

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1 that you might --

2 MR. PARLER: Well, I can't speak to any
3 other area. I'll be glad to look, but certainly there
4 are other ways that if the Congress doesn't like the
5 direction that an independent regulatory agency is
6 headed in, there are a variety of ways, such as doing
7 something to their appropriations or to their
8 authorizations, et cetera, as the Federal Trade
9 Commission experienced several years ago.

10 CHAIRMAN CARR: I've been in previous
11 situations where you had all the authority in the
12 world but no money to spend it on a certain item.

13 COMMISSIONER ROGERS: Oh, yes, it can be
14 done.

15 CHAIRMAN CARR: Any other subjects?
16 We stand adjourned.

17 (Whereupon, at 9:14 a.m., the above-
18 entitled matter was adjourned.)

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