

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**Title: BRIEFING BY ORGANIZATION OF AGREEMENT
 STATES - PUBLIC MEETING**

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING BY ORGANIZATION
OF AGREEMENT STATES

PUBLIC MEETING

U.S. Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland
Monday, February 26, 1996

The Commission met, pursuant to notice, at 10:00
a.m., the Honorable Shirley A. Jackson, chairman, presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, CHAIRMAN
- KENNETH C. ROGERS, COMMISSIONER
- GRETA J. DICUS, COMMISSIONER

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1 NRC STAFF PRESENT:

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MARTIN MALSCH, Deputy General Counsel

4

JOHN C. HOYLE, Secretary

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REPRESENTING THE ORGANIZATION OF AGREEMENT STATES:

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TERRY STRONG, Chairman

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BOB QUILLIN, Chairman-Elect

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RICHARD RATLIFF, Past Chairman

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TOM HILL, Secretary

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P R O C E E D I N G S

[10:00 a.m.]

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3 CHAIRMAN JACKSON: Good morning, ladies and
4 gentlemen. This morning I would like to welcome
5 representatives from the Organization of Agreement States --
6 Mr. Hill, Mr. Ratliff, Mr. Strong and Mr. Quillin -- who
7 will be briefing the Commission on some of the more
8 significant issues confronting the Agreement States today.

9 Today's briefing by the Organization of Agreement
10 States is important to the Commission for several reasons.
11 Nearly three-quarters of the materials licensees, about
12 15,000 in this country, are regulated by 29 Agreement
13 States. The size of this program makes it critical that the
14 NRC and the Agreement States work effectively and
15 efficiently to ensure that public health and safety are
16 adequately protected. Only through cooperative efforts of
17 both organizations will this program continue to succeed.

18 Today the Commission looks forward to hearing from
19 you on your views on the status of the program, but before
20 we begin I would like to note that this is the first public
21 Commission meeting for our newest Commissioner, Commissioner
22 Greta Dicus. I'd like to publicly introduce her, then.

23 I frankly find it quite fitting and indeed
24 comforting to have Commissioner Dicus at this particular
25 briefing, since she is a former chairman of the Organization

1 of Agreement States. So Commissioner Dicus, welcome.

2 Commissioner Rogers, do you have anything you'd
3 like to add?

4 COMMISSIONER ROGERS: No, not at this time.

5 CHAIRMAN JACKSON: Commissioner Dicus, anything to
6 add?

7 COMMISSIONER DICUS: Not at this time.

8 CHAIRMAN JACKSON: If not, Mr. Strong, you may
9 proceed.

10 MR. STRONG: Good morning.

11 I have been in this business for a long time now
12 and have been a participant in the NRC Agreement States
13 relationship for a very long time. I want to start with
14 this issue and I will come back to it at the end of my
15 remarks.

16 In my dealings in environmental health, broadly in
17 environmental health in the State of Washington, the
18 Agreement State program is probably the best example of
19 state and federal relationships that exist in the government
20 today. There are observers that point to this as the best
21 example, as the way programs can run, should run. It's an
22 outstanding example of the states and the federal government
23 working together on the same kinds of programs. We have the
24 same assignment in terms of radioactive materials.

25 It's just an outstanding program, and there are

1 several things that I want to look at specifically that are
2 examples maybe of -- I don't want to say inattention, but
3 it's like a marriage; the relationship needs to be worked
4 at. It needs to be groomed and taken care of and nurtured
5 on a continuing basis. There are several examples, several
6 things that I want to address as examples maybe of where we
7 can take better care of it.

8 There are two recent examples of doing business as
9 usual -- adopting rules, because that's usually the way we
10 do things; that's how we address these things. The example
11 of the Nuclear Regulatory Commission adopting a rule that is
12 intended to prevent the intentional exposure from the use of
13 radioactive materials.

14 I don't know that the states and the Nuclear
15 Regulatory Commission talked about that rule, about what we
16 could do, maybe other than adopting a rule, that would have
17 been just as effective, and the states didn't get involved
18 in that. I don't know if we had gotten involved in it that
19 something else might have been the result, but the NRC
20 proceeded to adopt that rule.

21 There's -- you'll hear more about it as we go
22 on -- the QM rule in regulating the uses of radioisotopes in
23 medicine. The federal government and the states talked back
24 and forth for a long time about that rule. And I don't want
25 to imply that the states always know what is the right --

1 CHAIRMAN JACKSON: Which rule are you referring to
2 here, the one that you're saying that the states and the NRC
3 talk back and forth about.

4 MR. STRONG: The QM rule?

5 CHAIRMAN JACKSON: Is that the one we're --

6 MR. STRONG: Yes. I think that our advice was,
7 "Don't do that. We don't think that's the right thing to
8 do. We would hope that you wouldn't do that. Don't do
9 that." And it got done anyway and now I think -- and the
10 states, many of the states have adopted the same rule, and
11 it doesn't work very well.

12 I'm not sure what we could have done together in
13 advance that might have prevented that except that we all
14 proceeded down the road kind of independently and it
15 didn't -- I don't think it's worked out just right for all
16 of us.

17 CHAIRMAN JACKSON: Can you give a little more
18 specificity to that by giving me one or two what you feel to
19 be particular vulnerabilities or negatives?

20 MR. STRONG: Can I come back?

21 CHAIRMAN JACKSON: Sure.

22 MR. STRONG: Can I come back at the end? Okay.

23 We talked about that but we didn't connect, on the
24 discussions, on the advice that we were working with.

25 Let me change gears to the Department of Energy.

1 There's been a number of reports. There's been a number of
2 initiatives that have gone on involving the Department of
3 Energy and the regulation of radioactive materials that are
4 used by the Department of Energy and their privatization
5 initiatives that they have dealt with.

6 Our sense of it is that the Nuclear Regulatory
7 Commission is really not enthusiastic, is maybe not able at
8 this point to regulate the uses of radioactive materials
9 that are used by the Department of Energy.

10 The states probably don't have the resources,
11 either, but the states are there. In my case, in the State
12 of Washington, I deal directly with the Department of Energy
13 on the Hanford Reservation all the time. There are
14 discussions going on right now that would allow the State of
15 Washington radiation protection program to regulate the uses
16 of radioactive materials on the Hanford Reservation. They
17 seem interested in that. We're interested in that.

18 I guess that I want to -- I don't want to go away
19 from or get out in front of the Nuclear Regulatory
20 Commission on that issue. I want to make sure that we
21 connect, that the discussions are complete and thorough and
22 that we do this together. We have a common assignment, to
23 regulate the uses of radioactive materials.

24 There's another initiative that you have that
25 affects the relationship between your organization and our

1 organizations. Your strategic initiative rebaselining
2 activity is going to address a lot of these things, and I
3 would hope as that goes forward, there are certain key
4 issues I know you have been involved in -- the Commission
5 has. The issue of training and travel funding for the
6 states -- that's a real hot button for us, that as your
7 strategic assessment looks at the relationship between you
8 and us, that that gets taken care of, examined so that
9 hopefully we can all be happy with that issue, as it would
10 end up.

11 The IMPEP program, the evaluation of our programs
12 and your regional programs as radioactive materials are
13 regulated -- I think that is on the positive side. I think
14 we are working together on that program, and I think that we
15 dare not disconnect on that. It's not done. We need to
16 make sure that that is done properly.

17 CHAIRMAN JACKSON: Do you have any thoughts about
18 the effectiveness of the program to date?

19 MR. STRONG: Well, it's new. After the pilot
20 activities, you've done one program. And I think my
21 conversations with North Carolina and the people who
22 participated in that program, I think that -- well, it's
23 your first time out, our first time out in the program.

24 No, except that it's positive. What I hear is
25 that it's positive. That's going to work all right. It's

1 an example of where we have gotten together and connected
2 and can make this thing work.

3 You're doing something else that I hope that we
4 could address, and that is the closest connection between
5 you and me, in the State of Washington, is the state liaison
6 officer, your person that is still in Walnut Creek. When he
7 retires, when he leaves, the plan is not to replace him, not
8 to replace that position, and you would bring that FTE back
9 here to Washington. And Bob Doda's FTE will come back to
10 Washington.

11 My ability to connect with you, to maintain the
12 relationship between us, when we have the same business --
13 we're in the same business together -- I can say that I wish
14 you wouldn't do that. I wish you wouldn't take that FTE
15 away, but I understand the necessity.

16 What I want to do is connect with you and talk
17 with you and make sure that we can all agree that that's the
18 best way to proceed with those FTEs. I'm really concerned
19 about the distance, simple things like time zone changes.
20 When I'm still working in my office at 5:00, you all are
21 gone home. At 8:00, I can't find you.

22 CHAIRMAN JACKSON: I'm here.

23 MR. STRONG: But I'm sure that you're not going to
24 give me your telephone number and I'm not going to call you
25 up. But there's somebody in the office at Walnut Creek at

1 5:00, when it's still 5:00 my time, and that's what I'm
2 driving at.

3 I want to go back to what I started with. This
4 Agreement State program with the Nuclear Regulatory
5 Commission is the most outstanding program, after all my
6 years of experience, I'm looking at the other federal
7 agencies that we relate to and I don't want this to get
8 damaged. I don't want, because of neglect, because of our
9 failure to communicate properly, because something goes
10 wrong -- I want to stay connected and I want this to work.
11 And I guess that's the bottom line of my message.

12 I think that Richard is going to talk specifically
13 about a program where we do connect.

14 CHAIRMAN JACKSON: Why don't we walk through your
15 agenda, and then we'll come back. I have a number of
16 questions and comments for you.

17 MR. RATLIFF: As I've been here before, we've
18 talked about various issues, but one that I think affects
19 not all Agreement States but the majority of them is the
20 industrial radiography rules. I think over the years, in
21 the courses I went to as a new inspector, NRC really
22 instilled in all of us the fact that this was an area where
23 there was the gravest danger, that prior to Chernobyl there
24 were probably more radiation deaths from industrial
25 radiography than any other commercial use of radioactive

1 material.

2 So we knew that there was a lot of problems. The
3 State of Texas worked with the Nuclear Regulatory Commission
4 in producing two documents -- "Working Safely in
5 Gammaradiography," another one that looked at all the
6 overexposures, and it was kind of a document to show
7 radiographers how their dumb mistakes can lead to real loss
8 of limb and serious radiation exposure.

9 And I think to that end, we all worked together to
10 really develop programs to try to stop these extremely high
11 exposures, primarily to young males who were normally what
12 they called at that time assistant radiographers. That
13 title meant that I may have been hired that morning and I
14 was now in charge of making radiographic exposures.

15 So I think the first step that worked well was the
16 NRC set up a steering committee and invited three of the
17 states. I was on the committee with Ronny Wascom from
18 Louisiana and Don Honey from California. And from NRC, Tony
19 Hsia chaired it and did a great job, because this was Tony's
20 first time to see radiography and we went to all of the
21 manufacturers and we went to field sites.

22 And what became clear through this meeting that we
23 all knew was if a radiographer used his or her survey meter
24 to check at the end of the exposure, there would be no
25 problem, but in reality, because of poor working conditions,

1 the constant push by the foreman, especially on pipeline
2 jobs, to get moving, they didn't use their meter and then
3 they had problems with exposures.

4 The report that we issued, though, set up a
5 comprehensive program we felt would help this to improve the
6 training, which was definitely needed because when you have
7 a person out there who has never seen a radioactive source
8 and ends up picking it up and holding it in his hands,
9 you're looking at the worst possible situation.

10 So training was a real strong need, and a
11 verification of training through a testing program, and
12 improvement of equipment because we knew that many times,
13 the equipment would not work. You would crank a source out
14 and it would become disconnected. And even if you used some
15 of your best safety efforts, you still had exposures that
16 were unnecessary.

17 This document was submitted to the Commission in
18 '84. It was titled "Radiography Equipment Safety
19 Performance Criteria." And because we have so many
20 industrial radiographers in the Southwest, along the Gulf
21 Coast area, Texas decided and we applied for a grant from
22 NRC to do a pilot certification test.

23 And NRC funded this, about half of the funds for
24 this, and Texas went and developed a test that was monitored
25 and designed by a cyclometrician. I never knew was a

1 cyclametrician was until then. But this person from the
2 University of Texas, she was able to show us that it's not
3 only the correct answer that's important on a test but you
4 have to make sure the wrong answers don't deceive people.

5 What we were able to do was develop a bank of 500
6 questions that we provided to NRC and then proceeded forward
7 to have additional questions that had been certified. So we
8 developed a whole bank of questions.

9 Based on the report that NRC had, Texas and
10 several other states went forward then and continued with
11 their rules. We actually put equipment standards in our
12 rules and went with a two-person radiographer crew. We felt
13 that if you had a -- all of our problems in Texas, Oklahoma,
14 Louisiana, had primarily been young, new assistant
15 radiographers with no training. We felt that if you
16 eliminated that problem, where you never had an assistant on
17 a job just with another radiographer, where they could get
18 in trouble, it would alleviate a lot of the problems.

19 And so we instituted that program and as it
20 developed, we started seeing a real improvement in the
21 performance of radiography companies. We eliminated, almost
22 within a two-year period, the number of burns. We were
23 seeing probably two to three burns, either on fingers or
24 hands. We had one person who was sterilized from the
25 radiation. We had really an early win.

1 We saw another thing, too, that all of a sudden
2 these people, these industrial radiographers had pride.
3 They would complain that they went to the dentist and the
4 dental technician had to take three sets of films because
5 they didn't know how to develop them properly and why
6 shouldn't they be credentialed? And you actually saw a
7 change in this field. I think it was really positive and
8 really led me to believe that these people now understood
9 and if they saw a bare radioactive source, you would no
10 longer have them pick it up and hold it and result in a
11 major injury to themselves.

12 So one of the things that one of my former bosses
13 did at a national meeting, at Bailey, was talking about this
14 radiography, and he said the other side benefit is all the
15 bad radiographers go to the other states and NRC states now.

16 Well, it wasn't long after that that we had people
17 from all over the country sending their radiographers to
18 take the Texas test so they could say that they had passed
19 the test and they could get jobs in other states.

20 And since that point, Texas worked with the
21 Conference of Radiation Control Program Directors, and there
22 are now seven states -- one of them a non-Agreement State,
23 Oklahoma -- who actually use the Texas test. They brokered it
24 through the conference and they're able to make sure that
25 these people who come on the job are trained.

1 Since the initial testing program in '87 there's
2 been over 4,000 radiographers in Texas and 8,000 across the
3 United States who have taken this test and passed it.

4 We feel that we've come a long way. Part of our
5 rules, where we were changing the equipment standards, was
6 probably the hardest to implement because you had, at the
7 time, four major companies who made radiography equipment,
8 and they just couldn't meet those standards. And they would
9 come, they met with us many times, until now, as you're
10 aware, finally the new radiography equipment standards are
11 now finalized in NRC's rules and we all see, I think, a real
12 positive outcome.

13 All of us, as regulators, though, and our people
14 should have seen it even more so, since we have so many
15 radiographers, didn't comprehend all the things in the rule
16 that would happen. One of them was that the gamma
17 pipeliners, which is a device that's just put on the
18 pipeline -- it doesn't have a source crank out -- doesn't
19 meet the new standards. So we have a lot of companies that
20 use pipeliners that really, because of radiation exposure
21 limits in the new rules, can't use them, and the fact that
22 there's only one company with cobalt-60 units that's
23 authorized to sell them.

24 So we're working with those licensees on a case by
25 case basis. In fact, we've had good working relationships

1 with NRC on this. I don't think any of us realize that the
2 airlines, when they radiograph airplane engines, have a
3 special need where their end of their guide tube can't meet
4 the ANSI standard because you have a thin tube that goes
5 into the engine. But in fact, it's locked in place and it's
6 tested before you crank the source out.

7 So we didn't want to shut the airlines down or not
8 have their engines radiographed, because we have to fly to
9 these meetings. And I think it's worked well. That's been
10 a good area.

11 The area where I think we've had a problem in the
12 recent times is the two-person crew. We feel real strong,
13 in the southern states that have a lot of radiographers,
14 that you really need two people there, and in Texas we feel
15 it needs to be two radiographers, to make sure that
16 operations are conducted safely, and the reason being that
17 you're using many times 200 Curie of radioactive sources.
18 And with these large sources, you're really at a potential
19 for a real public health threat is they're not properly
20 used.

21 I think NRC had a good process of getting input on
22 their Part 34, going to industry, to the states, and I would
23 have to say it's probably the best participatory rulemaking
24 I've seen amongst NRC and the states.

25 The only problem we had is when it finally came

1 out, the two-person crew was eliminated, even though the
2 industry people doing field radiography supported it, the
3 states supported it, and some of NRC supported it. And I
4 feel that's an area that we really do a disservice on
5 temporary job site radiography by not having two-person
6 crews.

7 The current NRC rule will be coming forward to
8 you, I think, and I appeal that you take a real close look
9 at that and work with the states because we really feel
10 strongly that without two persons being required, you'll run
11 into a situation where you could have a grave threat to
12 public health develop if there's an accidental situation.

13 We feel that the proposed language that we last
14 saw, where you would post signs to warn people to keep out
15 of this area because it could be a potentially dangerous
16 area just doesn't cut it for public health and safety.

17 We feel that the certification process that you
18 have adopted, though, is going to work well, and we're
19 hoping -- you know, one of the resolutions that I sent to
20 you after we had our Agreement States meeting was to set up
21 a group, and I think Terry is working on that, where the NRC
22 and the Agreement States and the Conference of Radiation
23 Control can work together because once we have multiple
24 certification programs, what we're going to have to do is
25 make sure that we recognize them under reciprocity, or else

1 the whole program becomes bureaucratic, and we really don't
2 help safety.

3 And so to that end, the Conference of Radiation
4 Control Program Directors is going to approve and set up a
5 1996 training session for radiographers for regulators in
6 Houston, Texas, and we feel this will get everybody together
7 to work out the problems, if there are any problems, on
8 reciprocity, on what is the minimum training course required
9 before you can take a radiography certification test, and we
10 feel one of the more important things, how much on-the-job
11 training must you have before you can actually take that
12 test and become a radiographer.

13 I think that this is an area, and Chairman
14 Jackson, this has been, I think, a good example of us
15 working together. We spent many hours, we've looked at
16 technical issues, we've looked at the issues of economics,
17 and I feel that we're at a point now where we can eliminate
18 all the overexposures if we just follow through with this
19 process.

20 CHAIRMAN JACKSON: Thank you.

21 MR. STRONG: Mr. Quillin.

22 MR. QUILLIN: I would like to review with you some
23 of the constraints that states currently face in adopting
24 regulations or implementing regulations. These constraints
25 particularly come into play when issues of regulatory

1 compatibility with NRC regulations are involved.

2 First, many states, including my own, have all of
3 their rules and regulations reviewed by their legislature.
4 In Colorado's law, it is by the Legislative Counsel. If the
5 Legislative Counsel determines that a regulation is outside
6 the scope of the enabling statute, the agency that adopted
7 the regulation has the option of withdrawing the regulation
8 or appearing before a legislative committee. My experience
9 is that very few agencies have the legislative committee
10 agreeing with them and disagreeing with the Legislative
11 Counsel. In fact, there is a real risk in this encounter of
12 the committee interpreting issues beyond those initially
13 under discussion.

14 While the review normally comes soon after new
15 regulations are adopted, certain more universal issues
16 affecting multiple agencies can be addressed at any later
17 time.

18 Second, legislatures have the option of sunseting
19 regulations after a period of time. In our state, this
20 involves a statute each year which continues all regulations
21 with certain identified exceptions. A bill is pending in
22 our legislature, however, to sunset all future regulations
23 after three years and all existing regulations on July 1,
24 1999.

25 Third, takings are a major issue in the states.

1 Takings mean any action of a governmental entity by which
2 private property is taken or damaged such that a court may
3 require compensation to the owner. By my count, we have six
4 bills in our legislature on this issue. They range from
5 creating a factfinder to help resolve disputes to requiring
6 removal of any state employee responsible for mandating the
7 state action or promulgating a regulation which resulted in
8 a state agency violating a property right.

9 My division was involved in a takings case which
10 began in 1987 and ended in 1995. The state won the case in
11 the Colorado Supreme Court, having lost in all of the lower
12 courts. The plaintiff appealed for rehearing before the
13 Colorado Supreme Court and was denied and asked for a
14 hearing before the U.S. Supreme Court and was denied. While
15 the state ultimately won this case, it took a long time and
16 considerable resources to litigate this case.

17 Fourth, cost-benefit considerations are becoming a
18 more important consideration in justifying regulations. In
19 our existing administrative procedures process, we must make
20 a cost-benefit finding. Legislation is pending to require a
21 more comprehensive risk-benefit analysis if the cost of
22 implementation of a regulation is estimated to exceed \$1
23 million. This cost includes the cost to the state, its
24 citizens and persons affected by the proposed regulation.
25 No time limit is specified.

1 Because of legislation passed last year, our Air
2 Pollution Control Division has had to hire an environmental
3 economist to perform specific analyses required in that
4 area. The State of Washington, in a revision to their
5 regulatory development process last year, now requires a
6 small business economic impact statement.

7 I must challenge the Nuclear Regulatory Commission
8 to do more thorough and documentable cost-benefit analyses
9 in their regulatory processes. When we have had to adopt a
10 regulation due to compatibility requirements, I honestly
11 have not found the NRC analyses to be that supportable or
12 transferable.

13 CHAIRMAN JACKSON: You're saying that this is true
14 across the board?

15 MR. QUILLIN: In the ones that we've had to adopt,
16 yes. We've had very great difficulty in trying to translate
17 that into the local environment.

18 CHAIRMAN JACKSON: Now, some of our rules have to
19 be subjected to a backfit analysis. That does not give you
20 the kind of cost-benefit information and documentation that
21 you think you need. Is that what you're telling me?

22 MR. QUILLIN: One of the weaknesses is that the
23 basic assumptions, and I'll give you an example on the
24 current rulemaking on incident reporting, the assumption
25 there is that we have three choices. We either adopt a rule

1 or we put this into regulation or we basically do nothing.
2 And the decision was to adopt a rule.

3 The assumption, I think, was that 20 hours would
4 be used to perform one of these analyses as to whether it's
5 an incident that needs to be reported or it's not, and the
6 cost is whatever your hourly cost is -- \$117 an hour, or
7 something like that. So the total cost to a licensee is
8 \$2,000.

9 Our experience in this is that that underestimates
10 the time involved and the expense involved in doing that
11 kind of analysis on a routine basis. That may be just our
12 experience, but that's basically the experience we've had.

13 We're involved in a case right now where it's
14 questionable whether it was or was not intentional and
15 whether it was or was not regulated material. I spent
16 probably 10 hours of my own time on that particular case,
17 trying to figure out and help the licensee through the
18 process. I know the licensee has spent at least 20 hours on
19 that case.

20 I think the cost-benefit analyses have to look at
21 more options and give a degree of uncertainty that the range
22 may be as low as such and as high as such and we think the
23 average is such, so that you have a better feeling for what
24 the cost is going to be.

25 Sixth, most, if not all states, have

1 Administrative Procedures Acts. Ours requires a public
2 hearing on proposed regulations. While you attempt to
3 resolve all issues prior to the public hearing, you never
4 know who will appear and what they may say. If the comments
5 received at the hearing appear reasonable, the hearing panel
6 may require that you start all over in the process, with
7 consequent delays. I can assure you that panels do not like
8 to have major controversies presented to them in a public
9 hearing and that compromise is the order of the day.

10 I skipped fifth, which is our goal is to achieve
11 compliance with our regulations. Our priority is to use
12 compliance assistance to achieve this, not enforcement. I
13 recognize that enforcement must be used in certain cases,
14 but in the long run, compliance assistance is more effective
15 and more acceptable to our customers.

16 Our goal is the win-win situation. We have one
17 licensee that we have been at swords points for years. We
18 both recognized that this was not a productive use of their
19 or our resources. Using a TQM process, we have now resolved
20 a number of major issues and developed a positive working
21 relationship. Win-win results are achievable.

22 Seventh, there are frequently jurisdictional
23 overlaps in the states. A prime example are licensing
24 boards. Some of these boards may guard their turf
25 jealously. When the NRC issues a regulation which requires

1 certain qualifications of an already state licensed
2 individual, there is always the potential for conflict in an
3 Agreement State.

4 There may also be jurisdictional overlaps with
5 agencies that regulate activities such as hospitals or
6 health care organizations or other non-health care
7 organizations and companies. These overlaps must be taken
8 into consideration as an Agreement State adopts regulations
9 and appropriate compromises are subsequently made.

10 Eighth and last, Colorado may be unique but we
11 have a self-audit statute which provides confidentiality for
12 audits done by regulated entities. This confidentiality
13 does not apply to records or surveys which are required
14 specifically by statute or by regulations. NRC's
15 regulations and our regulations require many such surveys
16 and records. However, we are limited to these and cannot
17 use any other materials a licensee develops itself.

18 This is a particular problem in the EPA programs,
19 where there is less specificity in surveys and records
20 requirements. Obviously any additional records which we
21 might want to require in the future would have to meet the
22 cost-benefit considerations.

23 In summary, the Agreement States face challenges
24 in the adoption of regulations and in the implementation of
25 regulations which go beyond those faces by the Nuclear

1 Regulatory Commission. As the NRC sets compatibility levels
2 for its regulations, it needs to consider the challenges
3 that the Agreement States face in adopting identical or
4 similar regulations.

5 CHAIRMAN JACKSON: Are you done?

6 MR. QUILLIN: I'm done.

7 CHAIRMAN JACKSON: Mr. Hill.

8 MR. HILL: Thank you. My comments parallel
9 somewhat those that Terry started the briefing with.

10 The Agreement States relationship with NRC for
11 years has been one of reactivity, and there's no pun
12 intended with that. The Agreement States have reacted to
13 actions initiated by NRC. We are and have been comfortable
14 in that role. I believe NRC is also comfortable with the
15 Agreement States being in that role.

16 It's much easier for NRC to respond to the states
17 when we are reactive. After all, NRC has initiated rules,
18 licensees have reacted to that, NRC has responded to that,
19 and that seems to become the relationship the NRC and the
20 Agreement States have had and probably is the basis for the
21 Agreement States' long-standing complaint of being felt
22 treated as licensees.

23 When the Agreement States endeavor to shift from
24 reactive to being pro-active, it moves us out of our comfort
25 zones, and I believe it moves NRC out of its comfort zone,

1 also. As evidence, I put forth the Adequacy and
2 Compatibility Resolution by the Agreement States in 1989 and
3 the Agreement States' desire for early and substantive input
4 into rulemaking.

5 Looking back a little bit, on October 30, 1995 at
6 the NRC Agreement States meeting, Wayne Kerr gave what he
7 referred to as a progress report card on the issue of
8 adequacy and compatibility. I'm not going into that further
9 here, as that's available in the transcript of the meeting.

10 At that meeting we saw and heard about the
11 progress being made in early and substantive input in
12 rulemaking and other initiatives affecting the Agreement
13 States. Examples included states' involvement in IMPEP
14 reviews, in the NRC working groups, in state input at the
15 draft rulemaking plan stage.

16 Progress has been made and I trust will continue
17 to be made as we work to become accustomed to changing
18 roles.

19 There is another area that I believe we need to
20 work closely with NRC, rather than reacting to NRC, and
21 that's the area of strategic planning.

22 Since I first drafted these thoughts, two items
23 come to my attention that I think illustrate the difficulty
24 with accepting changing roles. On the 31st of January 1996,
25 a Federal Register notice was published announcing a

1 proposed addition to Part 20. This has been mentioned here
2 already today, Section 20.2205, entitled "Reports of
3 Unauthorized Use of Licensed Radioactive Material." The
4 states did not have an opportunity for early input into the
5 proposed rule.

6 The second item has to do with states' input into
7 rulemaking. The current bulletin board process provides for
8 Agreement State input into a draft rulemaking plan. This is
9 an effective process. Through interactions with NRC staff
10 in recent weeks I've become generally aware that the
11 Commission is possibly considering revisions to the
12 rulemaking plan process. The Organization of Agreement
13 States would not welcome any revision that would reduce the
14 opportunity for Agreement States to provide early and
15 substantive input into the rulemaking planning process.

16 NRC's proposed rules affecting materials licensees
17 generally require that the Agreement States adopt an
18 equivalent rule to maintain a compatible program. When the
19 Agreement States have the opportunity, based on their
20 experiences, for early and substantive input into the
21 rulemaking plan, as well as the proposed rule, they're more
22 likely to support the final rule.

23 Since the final rule has been defined at the
24 planning stage, comments at later stages in the rulemaking
25 process by the Agreement States have resulted in few

1 modifications to NRC's positions.

2 Current challenges that are facing the states, as
3 well as NRC, include budget cuts, shifting regulatory
4 emphasis from prescriptive to performance-based rules, a
5 reduced materials workload for NRC as more states sign
6 agreements, NRC's rebaselining initiative, and the report by
7 the Institute of Medicine of the National Academy of
8 Sciences.

9 Budget cuts. We have been hearing about and are
10 aware of budget cuts at the federal level. We at the states
11 are also experiencing budget cuts. In Georgia, the budget-
12 cutting effort is referred to as redirection -- a
13 redirection of resources from lower priority areas to higher
14 priority areas within the state.

15 Also coupled with the redirection is the
16 privatization of certain state activities. Governor Miller
17 has mandated a 5 percent redirection or budget cut for each
18 of the next three fiscal years. The total will be greater
19 than 15 percent, since inflation cannot be considered after
20 each year.

21 Performance-based rules. We're also aware of the
22 desire of the regulated communities for a shift away from
23 prescriptive rules to performance-based rules. NRC's been
24 working in this area with rulemaking for some time, and the
25 trend towards performance-based rules appears to be gaining

1 momentum. I had a gentleman in my office just last week
2 talking about performance-based rules and the industry's
3 desire for those.

4 NRC is either currently regulating as many
5 materials licensees as some of the larger Agreement States,
6 or will be in the not too distant future. Massachusetts is
7 to become an Agreement State in 1996 and Ohio, Oklahoma and
8 possibly Pennsylvania may become Agreement States a few
9 years later.

10 To touch on the rebaselining issue, NRC is
11 undertaking a rebaselining initiative, as described by Hugh
12 Thompson at the October 1995 NRC Agreement States meeting.
13 A 13-member committee is charged with reviewing NRC
14 activities to ensure that these activities are in line with
15 NRC's mission.

16 We understand that the initiative is to be
17 completed by the fall of 1996 and consists of four phases:
18 reviews and assessment of some 4 to 5,000 on-going NRC
19 activities; strategic planning, resulting in a new set of
20 goals and strategies; organization of NRC; and human
21 resource assessment. My interpretation of human resource
22 assessment is doing more with less staff. Or it could
23 possibly mean having staff do different things.

24 Will the rebaselining effort of NRC, by default,
25 redefine, via compatibility and adequacy, the way Agreement

1 States regulate?

2 The National Academy of Sciences report. Since
3 the NRC Agreement States meeting last October, the Institute
4 of Medicine, National Academy of Sciences, released their
5 report entitled "Radiation in Medicine, a Need for
6 Regulatory Reform." The implementation of the
7 recommendations in the report can greatly impact the way the
8 NRC and Agreement States regulate the use of radioactive
9 material in medicine.

10 Those are all activities that are currently facing
11 NRC, in a very abbreviated form, and the Agreement States.
12 I think they kind of speak to a challenge that we have, and
13 I enumerated those to ask this question: What will the
14 regulatory playing field look like in, say, two, three, or
15 even five years from now?

16 I believe that NRC's rebaselining effort will
17 result in shaping of the regulatory playing field.
18 Impacting the shape of that field are the budget cuts,
19 performance-based rules, NRC's reduced materials regulatory
20 workload, and how we, the NRC and Agreement States, regulate
21 the medical use of radioactive material.

22 The challenge, as I see it, is for NRC and the
23 Agreement States to pool our resources, work cooperatively
24 to create on paper, by the fall of 1996, the future
25 regulatory playing field. We must then continue to pool our

1 resources and work cooperatively to create that future in
2 reality.

3 Otherwise, the Agreement States and the NRC will
4 be in the old, comfortable position of the Agreement States
5 reacting to NRC initiatives and the full benefit of the
6 resources of the NRC and Agreement States working together
7 will not be realized. NRC and the Agreement States must be
8 willing to work outside our comfort zones.

9 How, then, can we work together to create our
10 future? I suggest another working group or similar approach
11 that will look to the needs of NRC in view of NRC's
12 baselining activities and the needs of the Agreement States
13 who regulate, among others, machine-produced radiation and
14 naturally occurring accelerator-produced radionuclides.
15 Objectives of this group would be to ensure that the
16 regulatory playing field of the future is fair to the
17 Agreement States and to the NRC and that it will not
18 adversely impact the varied needs of the states.

19 Thank you.

20 CHAIRMAN JACKSON: Thank you very much, Mr. Hill.

21 Let me make a couple of comments and let me ask a
22 few questions, and then I'll allow my fellow commissioners
23 to do so, also.

24 If I listen carefully to much of what each of the
25 four of you have said, one would get the impression that the

1 Agreement States are feeling like second class citizens and
2 that you would not like to continue to be treated as such.

3 And so it strikes me that the overarching question
4 is how to bring your state expertise and needs to bear in a
5 consistent and comprehensive way in our regulatory
6 processes; in particular, those parts of it that affect you
7 the most.

8 And it also strikes me that you've also spoken or
9 interwoven through much of what you've said are the ways out
10 of it, of what you might feel to be this second class
11 citizenship. And so I guess I'd like to kind of walk
12 through some things that struck me and get your reactions to
13 those. Then I will speak to a couple of the points that
14 different ones of you, but particularly Mr. Hill, raised.

15 I think interaction and communication is what I
16 heard. Now, my understanding is that, and particularly up-
17 front interaction in the areas that are of greatest concern
18 and impact to the Agreement States, and I know that there
19 are various working groups and, in particular, with respect
20 to the on-going implementation of a new adequacy and
21 compatibility policy statement. And I guess I'd like to get
22 some assessment from you of how well that is working, since
23 you, in fact, spoke to difficulties that some of the
24 compatibility requirements pose for you. So I'd like to
25 understand that a little bit better.

1 MR. STRONG: Let me just start, but nobody's shy.

2 CHAIRMAN JACKSON: That's clear.

3 MR. STRONG: You have an institution that, within
4 certain limits, goes on. Staff does not change, the same
5 people that we would deal with over a period of years. It
6 doesn't change very much. Every year, there's a new guy
7 that sits at this table to give this briefing to you.

8 And I suppose, within certain limits, our
9 organization doesn't change an awful lot, but I think that
10 it's more difficult for us to relate back to you
11 consistently, and we don't relate to you very often -- once
12 a year. Maybe we can get you to come to a meeting and speak
13 to us or something like that.

14 CHAIRMAN JACKSON: All you have to do is invite
15 me.

16 MR. STRONG: And we have and we will and you'll
17 not be off the hook for that.

18 The consistency -- I think we feel like we're at a
19 disadvantage, in order to deal with you consistently,
20 because our group changes, and I'm not sure what to do about
21 that. Tom's idea of a new working group -- I don't know if
22 we need another committee. I'm not sure we know what else
23 to propose, but another committee on top of what we are
24 doing now?

25 Something that brings permanence, something that

1 is really effective so that we're sure that you hear us and
2 what we're concerned about is -- maybe we can explore that,
3 that we can figure something out right here, and I don't
4 know where Bob and Richard might want to go with that.

5 MR. RATLIFF: I feel that your basic question is
6 are the working groups actually being successful, and I
7 think the answer is yes. I know the IMPEP group has really
8 worked well. It's bringing the state counterpart in with
9 the NRC. It helps the state members because they'll know
10 what to expect when they're reviewed. I think overall,
11 that's going to be a real successful effort.

12 Having the states have four representatives on the
13 management review board is going to really help because
14 that'll, I think, give the state who's in the hot seat -- at
15 least know that one of their compatriots is out there, and I
16 think we'll hold them to an equally or higher standard than
17 you will, which is good, and I think overall that'll help.

18 The adequacy and compatibility -- when I asked for
19 volunteers it surprised me that I got people. That's going
20 to be the hardest one, going through all of the NRC rules
21 and determining what division of compatibility has got to be
22 the most onerous job that anybody's taking on, and those
23 three people I think will do well.

24 So I think we've really improved relations. It's
25 just certain areas that we get into I think where we feel

1 uncomfortable and certain things where, like you said, all
2 of a sudden we feel that we're going along as regulatory
3 partners and all of a sudden we're not invited to the dance;
4 we're left at home. I think that's where I see us coming
5 from.

6 CHAIRMAN JACKSON: Another area that it strikes me
7 is ripe for helping to address some of your concerns is in
8 what I would call specificity of assessment. You talked
9 about industrial radiography and you gave a good assessment
10 of the historical problems, where you are now, et cetera.

11 I think that from my perspective, what's helpful
12 in being able to address where there may be difficulties is
13 to try to pin down, as much as possible, where they are,
14 where the difficulties are, and what could address them.
15 So I would just encourage you along the line of what I'll
16 call specificity in assessment.

17 A third area which all of you have alluded to is
18 the one of resource commitment. I think it's important when
19 the Organization of Agreement States is assessing its needs
20 or, conversely, if one is looking at what our program
21 requires of you and what you thereby need, to understand
22 from a resource commitment point of view what is really
23 needed, but that includes what will things really cost, and
24 then to have discussions about what is actually available.

25 Now, I know about the issue having to do with the

1 training and travel funding for states, and I'm not going to
2 speak to that specifically today because that is under
3 active consideration and will be under active consideration
4 with discussions with your organization. But one has a
5 federal agency, which is a federal agency, but that is
6 funded through licensee fees, and one has an Agreement
7 States program where, by definition, those who are regulated
8 in those states are not licensees of the NRC.

9 And so the question becomes what are the real
10 needs and how and who is going to pay for them, or how is
11 that going to be partnered, particularly when in our
12 appropriations legislation certain areas, including the
13 Agreement States program, gets singled out for criticism.

14 So that is why the Commission is considering this
15 as part of the overall strategic assessment, because it has
16 to be considered within the broader context. It's not a
17 simple matter of continuing or not continuing, but the issue
18 becomes how does it work within the broader context?

19 You mentioned cost-benefit, and you criticized how
20 the NRC does it. I think it would be very helpful, from an
21 Agreement States perspective, that you help to do some of
22 that calculation.

23 Now, the difficulty is going to be the variability
24 from state to state. But again, because you are the
25 Agreement States organization, there may be a way that you

1 could contribute in terms of laying out options or bounds in
2 that process.

3 And then let me just march down the list that Mr.
4 Hill talked about. The budget cuts -- we are facing budget
5 cuts, and that's not likely to go away, but that is also why
6 my earlier comments about what things cost versus what makes
7 sense to do and who's going to pay or how is it partnered is
8 part of a larger discussion.

9 You mentioned performance-based rules and again, I
10 think that is one that's ripe for continued discussion and
11 intense interaction.

12 You mentioned rebaselining and human resource
13 assessment and you made what I might consider to be some
14 pejorative comments, but I didn't take them as such because
15 I don't think that it's a question of necessarily leaning
16 one way or the other. It's a question of looking at where
17 our overall programs are going and what is on our plate,
18 what looks like it's coming onto our plate, and deciding
19 then how do we address that, what our human resource needs
20 are. And it's not something that's meant to cut any given
21 player out of the game because the NRC has many stakeholders
22 in the process, and there are many who are concerned about
23 the regulatory playing field, as it were.

24 The National Academy of Sciences report and how
25 we're going to interact and decide how to react to that

1 report is not something that's going to be done in a
2 precipitous manner, and it obviously is something that
3 requires intense interaction with the states. That would be
4 all the states, because they would be affected.

5 So all I ask you to do is not to prejudge what you
6 think the outcome is going to be, because I haven't
7 prejudged it and I don't think obviously my fellow
8 commissioners have prejudged that.

9 And so again I go back to saying I think we all
10 have to operate in good faith, but the greater the degree of
11 specificity in assessment and recommendation and process you
12 can bring to us, the greater the possibility of making
13 progress on the issues that are of concern to you.

14 I'll make some other comments later but I'd like
15 to give Commissioner Rogers and then Commissioner Dicus a
16 chance to pose any questions or comments they'd like.

17 COMMISSIONER ROGERS: Well, I think your comments
18 have been very interesting. They are not entirely new, of
19 course. Some of these are issues that have been around for
20 a long time and we've been working on but they are very
21 difficult ones sometimes.

22 I'd just pick up on what the Chairman has said
23 with respect to the specificity. I think that in trying to
24 find ways to alleviate some of the shortcomings of our
25 interactions that we really do need help on this in how to

1 do it because I think that we can sit here and think of
2 things in generalities but it is really a specific fix of
3 some sort that ultimately has to come about. And I think
4 your contributions to us in that regard could be very, very
5 helpful.

6 I think this is not an area where one wants to be
7 singlemindedly too creative. I think it has to be a joint
8 kind of activity, that we have to find something that meets
9 your needs and our needs at the same time.

10 And that brings me back to the relationship that
11 we have, which is a very peculiar one in many ways. It is
12 one in which you are given responsibility for a big piece of
13 what NRC ordinarily does and yet somehow we are still held
14 accountable for what you do.

15 That became very clear to commissioners some years
16 ago when a congressional committee began to be very unhappy
17 with the way we dealt with the Agreement States program and
18 held us very personally accountable for any kind of
19 shortcomings that they could perceive in what happened in
20 any of the Agreement States. And it was a very
21 uncomfortable period for the Commission. We were quite
22 thoroughly beaten up, I think somewhat unjustly but not
23 entirely so.

24 And it illustrated the very complicated
25 relationship that we have, where we, in fact, hand over,

1 through the Agreement States program, responsibility to you
2 and yet whatever happens in the Agreement States that
3 involves radioactive areas that have a health consequence,
4 we will be held accountable for them, and personally
5 accountable for them. It's something that you have it but
6 we haven't given up our responsibility.

7 And it's a relationship that can only work, I
8 think, through very close interaction and very close
9 communication because I think otherwise, we're bound to see
10 the same kind of problems arise time and time again in the
11 future, where something happens in an Agreement State and
12 NRC is held accountable for it and NRC says, "But we really
13 aren't directly involved there," and that doesn't satisfy
14 anybody when we have to say that in a congressional hearing.
15 And so that means that very strong communication is quite
16 important.

17 And what I hear is the pain of this relationship,
18 in a certain sense, that it is a peculiar one. I don't
19 think -- I would characterize your perception a little bit
20 differently from the Chairman's. I don't think you see
21 yourselves so much second class citizens --

22 CHAIRMAN JACKSON: No, being treated that way, not
23 that they are.

24 COMMISSIONER ROGERS: Well, or being treated that
25 way, but being treated in a way that everybody else is being

1 treated, whereas, in fact, you have a considerable
2 additional responsibility.

3 And so what you're asking for is a recognition of
4 that special status that you have that is different from
5 non-Agreement States. And it seems to me that that's where
6 part of the problem arises, in how to do that.

7 I think that we can be much more communicative
8 with you than we have been, but I know that from time to
9 time there have been legal issues raised with respect to how
10 communicative we could be with you on, for instance,
11 rulemaking.

12 And I don't know. I don't want to put Mr. Malsch
13 on the spot but Mr. Malsch, I wonder if you could comment in
14 any way easily on where the limitations might arise with
15 respect to the Commission recognizing input from the
16 Agreement States very early on in a rulemaking, where we
17 haven't had a chance to go public with it to everybody.

18 MR. MALSCH: I think at an early stage there
19 really are very few limitations. Offhand, I can think of
20 none. I mean, the analogy to rulemaking is legislation,
21 which is pretty much an open process. For informal
22 rulemaking, it is an open process. It's not a very
23 structured process. There's no prohibitions on ex parte
24 communications or separation of functions.

25 So especially early on, I think there are very few

1 legal limitations.

2 COMMISSIONER ROGERS: Do you think that we've been
3 too cautious in eliciting responses from the Agreement
4 States in rulemaking?

5 MR. MALSCH: Well, if we have been reluctant
6 because of legal considerations, I think we may have been
7 too cautious, but I think maybe other considerations may
8 have been driving it, also. But from a legal standpoint,
9 there are very few legal limitations associated with early
10 interaction in rulemaking.

11 COMMISSIONER ROGERS: Well, I think that we have
12 to keep that very much in mind.

13 I wonder -- there are some specific questions.
14 One is, Mr. Quillin, you talked about this problem and the
15 Chairman touched on it, as well, of more realistic
16 assessment of how much time it takes to do an analysis or to
17 comply with an NRC regulation.

18 Do you have any thoughts on how we can get better
19 data in this area? It seems to be a recurring problem all
20 the time, that we're accused of underestimating the costs of
21 some kind of new regulation. And yet I'm sure our folks try
22 to do the best they can.

23 I wonder if there's any way that you could be
24 specifically helpful to us in creating a database that's
25 more valid.

1 MR. QUILLIN: I don't think it's necessarily
2 creating a database so much as it's creating a process where
3 you can gather the information for the database.

4 I think one of the problems is that once you have
5 a rulemaking in progress, you get in a time frame and you
6 don't have much time to operate in to gather that
7 information. So I think estimates are made which may or may
8 not be valid.

9 I think there needs to be a way that you can go
10 outside the system you have now to gather that information
11 and to try to analyze it and present it in a more thorough
12 basis.

13 So I think it's the system and the process that
14 needs to be looked at.

15 COMMISSIONER ROGERS: Well, maybe we can't come to
16 something right here at the table but I do think this is
17 something that we ought to attack and see if can't find a
18 way, some new mechanisms that produce more satisfactory
19 results.

20 I think perhaps we've been using the same computer
21 program that the IRS uses to calculate how long it takes to
22 make your income tax, and that doesn't seem to work very
23 well.

24 I think I'll pass.

25 CHAIRMAN JACKSON: Thank you. Commissioner Dicus?

1 COMMISSIONER DICUS: Thank you, Chairman Jackson.

2 I find myself in this remarkably unique position,
3 having sat on both sides of this table in these kinds of
4 discussions. And I have a proximity, a close proximity,
5 both in time as well as knowledge to the issues that are
6 being discussed.

7 And for that reason, I really don't have any
8 comments and I'd have to say at this point in time, at least
9 not yet, any questions.

10 CHAIRMAN JACKSON: Okay.

11 Let me ask you two specific questions and then, if
12 we're done, I have some closing remarks.

13 As you know, the Commission continues to evaluate
14 the extent to which our low level waste regulatory program
15 should be reduced, if at all. Do the Agreement States have
16 any belief that we should cut the program, or have you
17 thought about that? And if so, which activities would be
18 candidates for reduction?

19 MR. STRONG: If you look at how many sites you
20 license, then it would seem to me that you could reduce the
21 amount of effort, the number of FTEs that you have. And
22 from the looks of the national picture, there are going to
23 be very few new licensed low level waste disposal sites, it
24 would seem.

25 But at some level, it does to me, to the State of

1 Washington, to the Northwest Compact -- I wear two hats; I'm
2 the chair of the Northwest Compact -- that there ought to be
3 somebody with the resources, with the capability to continue
4 to look at this process from a technical basis, from a
5 research basis, which the states or the compacts really are
6 not prepared to do.

7 I don't know where to draw that line. I can't be
8 more specific than that, but I'm willing to sit down and
9 let's take a look at exactly the process that we would have
10 to enter into. But for the NRC to keep a staff in
11 anticipation of licensing the next low level radioactive
12 waste disposal site that comes on line, that's really not --
13 you don't need to spend your FTEs in that area.

14 MR. RATLIFF: I think it parallels one of the
15 other areas you touched on -- the fees and who pays for it.
16 It's an area that could help NRC if you have an application
17 for a waste site. It obviously helps the NRC reactor
18 licensees who have to get rid of their low level waste, and
19 yet it may be that you have no direct licensee to charge
20 these costs to.

21 I think it's one of those areas that I think it's
22 been beneficial because going through this process, you're
23 able to provide some assistance to the states, who are on
24 the forefront, having to go through and combat the multiple
25 groups who have an agenda that's not based on safety but is

1 based on we don't want reactors, we don't want waste.

2 So we run into real problems there. And I think
3 your data, working with the data that we develop on a site-
4 specific basis, is beneficial.

5 CHAIRMAN JACKSON: Any other comments?

6 MR. QUILLIN: Yes. I have the benefit of having
7 served on two different compacts -- the Midwest Compact and
8 now the Rocky Mountain Compact. And in neither of those
9 terms, so to speak, did I really see any benefit that the
10 Nuclear Regulatory Commission provided to the compact
11 itself. There was some benefit that was provided through
12 the Department of Energy activities but not through the NRC
13 activities.

14 So one of the problems, I would say, is you need
15 to look at the customers you have for this program and
16 whether you're providing service to these different types of
17 customers, whether it be a compact, whether it be a state
18 that's developing a site and trying to establish criteria
19 for siting. Whatever it is, but you need to look at your
20 customers and see are your services focussed towards your
21 customers?

22 CHAIRMAN JACKSON: Okay. Mr. Hill?

23 MR. HILL: No comments.

24 CHAIRMAN JACKSON: Let me ask you another
25 question. Now, this, as I mentioned earlier, will be part

1 of a longer and on-going assessment, but I do invite any
2 views or comments you might have on the report of the
3 Institute of Medicine on the NRC's regulation of the use of
4 radioactive material in medicine.

5 Do you have any overarching comments you'd like to
6 make at this time?

7 MR. QUILLIN: I can say that I serve on the ACMUI,
8 so we've already made our comments.

9 MR. STRONG: Let me go, Richard. Then you can
10 deal with the specifics.

11 I think some interpretation of the report would
12 say that some physicians want NRC out of the business
13 altogether of regulating the radioactive materials that are
14 used in nuclear medicine. And I think that that probably
15 goes too far. I don't think that we would look at it that
16 way.

17 And so maybe the Nuclear Regulatory Commission
18 should not be practicing medicine, but they should not be
19 out of the business of regulating the materials that are
20 there. In Agreement States we are not going to stop doing
21 that. In non-Agreement States, I wouldn't think that you
22 should bail out altogether.

23 I don't know if that's the kind of dichotomy
24 you're looking at, but it's still radioactive materials.
25 It's still out there. There's still a public health and

1 safety issue that is there with regard to the use, not in
2 the practice of medicine but in the protection of the public
3 health from the radioactive materials, from exposure.

4 MR. RATLIFF: I feel this is one of the areas
5 where it was more politically driven as the NRC medical
6 rules developed and the Congressman Synar hearings, where
7 they were looking at past instances and really a relatively
8 small percentage of misadministrations occurring, and yet
9 bringing that to the forefront. And I understand in each of
10 our states we're before legislative committees where they're
11 just as hot, just as intense.

12 But I think one of the problems is that the rules
13 went too far. I know when I sat here last year and the year
14 before as president-elect, we recommended that the QM rule
15 was too strict. The regulation of nuclear medicine really
16 had to look at a balance.

17 We knew the states did not have resources to
18 review large quality management plans. We felt that that
19 was a waste. We knew NRC had to go out on contract, and
20 even the contractors, after they reviewed them, found most
21 of them were inadequate. So there was something wrong with
22 the system.

23 And my suggestion then was that we really look at
24 concentrating on health and safety. What rule would be more
25 effective in eliminating misadministrations, making sure

1 they're reported but not be so burdensome on the licensees
2 and the states? I think that's where we're going to have to
3 go.

4 CHAIRMAN JACKSON: Okay.

5 MR. HILL: You asked for overarching ideas and I
6 don't think I can add anything to what Terry and Richard
7 just said. It seems like that summarized it pretty well
8 from the Agreement States perspective.

9 CHAIRMAN JACKSON: Mr. Ratliff, you mentioned
10 medical administrations. In looking at it, it appears that
11 the number of events reported by Agreement States appears to
12 be significantly fewer than that reported by the NRC. Do
13 you have any thoughts as to the source of that difference?

14 MR. RATLIFF: I think part of it is randomness
15 because we'll have certain incidents that, regardless of how
16 well we've regulated a particular licensee, they'll have an
17 individual who makes a major mistake. But I think partially
18 the states, through the medical boards -- we regulate the
19 medical community; we do x-ray inspections; we inspect NORM.
20 We have much closer connections with the medical facilities,
21 and I think that's beneficial in the long run.

22 CHAIRMAN JACKSON: Okay.

23 Commissioner Rogers?

24 COMMISSIONER ROGERS: No, I don't have anything.

25 CHAIRMAN JACKSON: Commissioner Dicus?

1 COMMISSIONER DICUS: (Shakes head.)

2 CHAIRMAN JACKSON: Well, Mr. Strong, the
3 Commission would like to thank you and your colleagues for
4 an excellent summary of your views of the Agreement State
5 program. The Commission is particularly pleased to hear
6 that you intend to conduct your future annual meetings at
7 NRC headquarters each fall in order to facilitate the kind
8 of interaction and communication we've been talking about
9 with the NRC staff, as well as with the members of the
10 Commission.

11 And the Commission encourages you and the NRC
12 staff to continue to work together in order to successfully
13 carry out this very important program.

14 And I would just, in closing, like to bring your
15 attention back to four points that seem to have come out
16 today. They are, first, as both Commissioner Rogers and I
17 have spoken of, a mechanism for interaction generally,
18 whether there are improved mechanisms that might exist, as
19 well as mechanisms for earlier input to regulation and
20 rulemaking.

21 Secondly, it is very important that there be
22 specificity in assessment and recommendations coming out of
23 any assessments that are made, that are as specific as
24 possible.

25 Third, that you work and help us to work to

1 understand better resource commitments that would be
2 involved with what your needs are but also what you think
3 resource commitments or costs would be relative to any
4 regulations we might be promulgating.

5 And related to that, then, is the fourth, which is
6 I think you have a role to play in developing cost-benefits
7 options and bounding, given the variability of the various
8 state programs.

9 So again I thank you very much for a thorough
10 briefing, and if there are no other comments, we're
11 adjourned.

12 [Whereupon, at 11:17 a.m., the briefing was
13 adjourned.]

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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 - PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Monday, February 26, 1996

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: Susan Harris

Reporter: Susan Harris



**ORGANIZATION OF AGREEMENT
STATES**

BRIEFING THE COMMISSION

26 FEBRUARY 1996

Tom Hill, Secretary

Bob Quillin, Chairman Elect

Richard Ratliff, Past Chairman

Terry Strong, Chairman

OVERVIEW

- 1. Terry Strong - A Philosophical Look at the Relationship**
- 2. Richard Ratliff - Industrial Radiography Issues**
- 3. Bob Quillin - Compatibility Issues Facing the States**
- 4. Tom Hill - Beyond 1996**

A PHILOSOPHICAL LOOK AT THE RELATIONSHIP

TERRY STRONG, WA

- 1. Agreement States and the NRC**
- 2. Adopting Rules Because *That's How We Do It***
- 3. Regulating DOE's Uses of RAM**
- 4. Examples of State/Federal Relationships**

INDUSTRIAL RADIOGRAPHY ISSUES

RICHARD RATLIFF, TX

- 1. History of Overexposures**
- 2. NRC-A/S Steering Committee 1994**
- 3. Industrial Radiography Certification**
- 4. Current Regulatory Issues**

COMPATIBILITY ISSUES FACING **THE STATES**

BOB QUILLIN, CO

- 1. Legislative Review of Regulations**
- 2. Sunset of Regulations**
- 3. Taking Considerations**
- 4. Cost - Benefit**

-2-

COMPATIBILITY ISSUES FACING
THE STATES

- 5. Compliance Assistance Vs. Enforcement**
- 6. Administrative Procedures**
- 7. Jurisdictional Overlaps**
- 8. Self Audits**

BEYOND 1996

TOM HILL, GA

- 1. NRC/Agreement States Relationship**
- 2. A Look Back: Adequacy and Compatibility**
- 3. Budgets and Changing Responsibilities**
- 4. The Challenge - Our Future**

SUMMARY/DISCUSSION

ALL PARTIES

- 1. The Commissioners**
- 2. The Executive Committee**