

NUCLEAR REGULATORY COMMISSION

ORIGINAL

RETURN TO SECRETARIAT RECORDS

COMMISSION MEETING

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In the Matter of: PUBLIC MEETING

BRIEFING ON SECY-81-267 - 10 CFR 60,  
DISPOSAL OF HIGH-LEVEL RADIOACTIVE  
WASTES IN GEOLOGIC REPOSITORIES:  
TECHNICAL CRITERIA

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DATE: June 2, 1981 PAGES: 1 - 82  
AT: Washington, D. C.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BRIEFING ON SECY-81-267 - 10 CFR 60, DISPOSAL OF HIGH-LEVEL  
RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES:  
TECHNICAL CRITERIA

PUBLIC MEETING

Nuclear Regulatory Commission  
Room 1130  
1717 H Street, N.W.  
Washington, D. C.

Tuesday, June 2, 1981

The Commission met, pursuant to notice, at 10:05  
a.m.

BEFORE:

JOSEPH M. HENDRIE, Chairman of the Commission  
VICTOR GILINSKY, Commissioner  
JOHN F. AHEARNE, Commissioner  
PETER A. BRADFORD, Commissioner

STAFF PRESENT:

S. CHILK, Secretary  
W. DIRCKS, Executive Director for Operations  
P. COMELLA  
J. MARTIN  
J. WOLF  
M. BELL

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

1  
2 CHAIRMAN HENDRIE: The meeting will be in order.  
3 Why don't we start by asking the staff to relate  
4 the contents of their paper, which was last night's arrival,  
5 and is the thickest of the recent additions to the  
6 literature on this subject.

7 MR. DIRCKS: Let me mention another arrival that  
8 Jack is going to distribute. It is a letter that he  
9 received from Shelly Meyers with some last minute  
10 suggestions.

11 CHAIRMAN HENDRIE: Shelly wants to come back, does  
12 he?

13 MR. DIRCKS: He has come back in spirit.

14 He has a list of suggestions here that he wants  
15 incorporated. I will let Jack give you his opinion of it,  
16 and I think, in reviewing it, there are not too many  
17 additional new issues in there. I think that we have  
18 reviewed some of these in the past.

19 Jack, why don't you provide a capsule summary of  
20 that.

21 MR. MARTIN: I think a capsule summary, as Bill  
22 said they are not new issues, they would really rather not  
23 have any numbers placed on the waste package performance.  
24 They would really rather just have an overall figure of  
25 merit for the total system, as comment number one,

1 essentially.

2           But then, if we insist on having some numbers on  
3 the waste package, they would rather that we would put the  
4 reasonable assurance back in there, which we have done.  
5 Also, on the fractional release that that be reworded so  
6 that it does not include all the nuclides, just the ones of  
7 concern, which we talked about a couple of meetings ago, and  
8 to fix that as well.

9           So I believe that we have gone a long way to  
10 resolving the details of what we can resolve, but we would  
11 rather stick with the multiple barrier and defense in-depth  
12 approach rather than the single figure merit for the overall  
13 system. Of course this has been debated and discussed for  
14 the last two years.

15           COMMISSIONER AHEARNE: Jack, you say that you have  
16 put the reasonable assurance back in?

17           MR. MARTIN: Yes, sir. We have also fixed the  
18 part about limiting the -- We previously had a leach rate of  
19 one part and 10 to the 5th of individual nuclides. We had  
20 some discussion a couple of meetings ago of, shouldn't we  
21 limit that to the important nuclides, and not get down to  
22 atomic quantities of release. We have fixed that as well by  
23 limiting that requirement of those nuclides that are at  
24 least a tenth of one percent of the total Curie release,  
25 which essentially boils it down to about a dozen long-lived

1 plutonium, Neptunium, Technetium.

2 COMMISSIONER AHEARNE: What have you actually  
3 eliminated when you did -- The tenth of a percent is the  
4 curie release in the waste package itself; is that correct?

5 MR. MARTIN: It is the release from the engineered  
6 system, depending on how the engineers did it. It is the  
7 man-made portion of the waste package, the backfill. If  
8 they choose to make an engineered system of the excavated  
9 repository itself. It is the release from that manmade part  
10 to the --

11 COMMISSIONER AHEARNE: Geological site?

12 MR. MARTIN: Yes.

13 COMMISSIONER AHEARNE: Are you saying that if they  
14 were to propose an engineered system which has some unique  
15 capture sections for one of these long-lived materials, they  
16 could then not have to worry about that particular  
17 material?

18 MR. MARTIN: That is correct. That is what we are  
19 trying to encourage by rewriting it the way we did. What  
20 they were concerned about is, let's take very short lived  
21 things, theoretically they are still there in very small  
22 quantities, and they don't want to spend a lot of time  
23 researching and proving that tritium is still, because for  
24 all practical purposes it is gone. So by doing it our way,  
25 we eliminate everything except the americium 241 and 243,

1 neptunium, the three plutoniums, technitium 10, and uranium  
2 234.

3           So there are about a dozen isotopes that are still  
4 to be concerned, and I think that that takes care of their  
5 problem.

6           COMMISSIONER AHEARNE: Do you have any comment on  
7 their alternative proposal for the waste package, the  
8 temperature perturbation argument?

9           MR. MARTIN: We considered that, and decided not  
10 to go that way because one of the things that we are trying  
11 to do in this rule is to add some certainty to the licensing  
12 process, and having a rather vague statement like that  
13 doesn't really settle what the design requirements are, it  
14 just leaves it to be litigated later.

15           That was similar to other suggestions about why  
16 not design the waste package so that they are no more  
17 hazardous than a ore body at some certain point in time. We  
18 rejected that for the same reason, because it just doesn't  
19 settle what the design requirements are until very late in  
20 the game.

21           COMMISSIONER AHEARNE: They seem to have some  
22 misimpression, I believe. Their last bullet on page 2 could  
23 be read as saying that you would not allow the site specific  
24 mitigating factors in a calculation of overall system  
25 performance.

1           It is my understanding from what you said before,  
2 in the calculation of the overall system performance, in  
3 order to meet, say, EPA standards, they are going to have  
4 take that.

5           MR. MARTIN: Absolutely. The only part that we  
6 are holding fast on is that we do want a multiple barrier  
7 system, with some defense in-depth, and not leave what  
8 defense in-depth you have as an ill-defined thing to be  
9 defined by the applicant.

10          CHAIRMAN HENDRIE: "Your recent proposed amendment  
11 to the Procedural Rule," says Shelly in the middle of page  
12 2, "raised a new difficulty we have not had an opportunity  
13 to discuss." Did we discuss it?

14          MR. MARTIN: We did discuss it ad infinitum at the  
15 last meeting, and this was your point as to why we have  
16 these extra requirements on doing analyses that are not in  
17 the EPA standard. We have resolved it by deleting it all,  
18 and moving up paragraph No. 2, which also says that the  
19 design and construction requirements look too involved,  
20 can't you put some of that in Reg Guides. We agreed that  
21 probably some of that ought to be in Reg Guides, and we have  
22 a statement in the introduction asking for comment on that.  
23 We probably can back off on that a little bit.

24          CHAIRMAN HENDRIE: I must say that I got caught  
25 short last night. I got yesterday's paper, but I did not

1 have 81-266 with me, so I had to work from the less than  
2 complete proposition, although most of the pages from about  
3 28 on are there, I guess.

4           It looks to me that once you get passed 61-21, now  
5 we have additional requirements for the geologic setting.  
6 We have got a batch of favorable ones, a batch of  
7 unfavorable ones. I couldn't decide whether those set  
8 better in the rule or were covered in the rule by a general  
9 statement, and then appeared in the staff document.

10           You say, "Each of the following may contribute to  
11 the ability to meet the performance objectives," and it is  
12 okay.

13           In addition to having the 112 characteristics,  
14 which pertain to stability and water travel time chiefly,  
15 "the setting shall exhibit an appropriate combination of  
16 these conditions," conditions that follow, "together with  
17 the engineered system, the favorable conditions present are  
18 sufficient to provide reasonable assurance that the  
19 performance objectives will be met." With that kind of an  
20 introduction, I am not quite sure how to read any one of  
21 these favorable ones or, taking the reserve side of it, the  
22 adverse ones.

23           If sort of the bottom line with regard to one of  
24 these is, are the performance objectives met, or at least a  
25 reasonable showing made that the performance objectives are

1 met, then that might be because of one of these elements, or  
2 in spite of it, or without regard to it, in which case do I  
3 still regard one of these elements as counting either  
4 favorably or adversely with regard to the additional  
5 requirements for the setting. Do all of them apply? That  
6 is, the site has to show all of the favorable ones and none  
7 of the adverse ones.

8 I sort of gathered from the first paragraph  
9 language that that was not the case, and that it was not 100  
10 percent in and 100 percent out sort of situation.

11 MRS. COMELLA: That is right.

12 CHAIRMAN HENDRIE: On the other hand, it is not  
13 very clear what a passing score card would look like in  
14 order to satisfy 60.122.

15 As I say, even when I understand that, I am not  
16 sure exactly what I do with these things in light of the  
17 proposition that these thing together with the engineered  
18 system, the favorable conditions present are sufficient to  
19 provide reasonable assurance that performance objectives  
20 will be met.

21 Tell me how these things fit in the context of the  
22 rule, and do we really have quite the right words at the  
23 start of the section?

24 MRS. COMELLA: The staff had spent a great deal of  
25 time dealing with the question of whether or not one could

1 come up with site acceptability requirements where, if they  
2 were present, yes, you knew you had an acceptable site; if  
3 they were absent, or if the adverse conditions were present,  
4 you knew you had an unacceptable site.

5           After a great deal of discussion internally and  
6 externally with other experts in the area, it was determined  
7 that really we were not in a position to come up with site  
8 acceptability requirements, but we could identify conditions  
9 which if present would increase confidence that that site  
10 appeared indeed to be suitable to host a repository, and we  
11 could identify characteristics which if present certainly  
12 required further examination to see whether indeed they  
13 eliminated a site.

14           This section 122 was an attempt to identify the  
15 favorable ones, which if present would enhance the quality  
16 of the site, and others, which if present could make it  
17 unsuitable. That is what it is there for. We recognize  
18 that the site selection process would involve balancing,  
19 looking at what was there and what was not there in an  
20 attempt to arrive at the site which would host the  
21 repository.

22           Jack, do you want to add anything?

23           MR. MARTIN: We were basically faced with a  
24 dilemma. On the one hand, just about everybody who has  
25 looked at the siting question has urged that we have a set

1 of definitive siting criteria to go find sites, and that  
2 they be decided before and not after the fact.

3           When we looked at all the siting criteria that we  
4 have come up with, and the American Physical Society has  
5 come up with, and the other groups that have looked at this,  
6 every definitive set of criteria seemed to us to have a  
7 couple of features that might well reject an acceptable  
8 site.

9           So, instead, we hit on an alternate approach,  
10 which I might add has not gotten much comment, it seems to  
11 be favorably view, where we have more of a balancing  
12 approach, where we list the favorable conditions that you  
13 ought to find fairly definitively -- you ought to have  
14 these; then we list the conditions that you ought to avoid,  
15 and if you have them, they raise the presumption that the  
16 site is rejected.

17           Then towards the end, we provide a conflict  
18 resolution section on page 42, I think, that shows that if  
19 you can really make a case that you, in fact, understand  
20 this condition, like tectonic instability, for example, and  
21 in fact can make a case that you have enough favorable  
22 conditions to offset that situation, then the site will  
23 still be considered acceptable.

24           This scheme works or should work, of course,  
25 because in the procedural rule we have required that there

1 be a number of sites to look at, so it is really linked  
2 quite closely, and if there were only one site to look at,  
3 this might be rather cumbersome. But it is the only way we  
4 could think of to resolve the question of not having siting  
5 criteria that rejected sites that might be acceptable, yet  
6 provided some definitive --

7           We feel that this approach, coupled with the fact  
8 that we are going to have at least three sites to look at,  
9 will result in a good site and not reject any that might be  
10 acceptable. As I say, this approach has not received any  
11 negative comment that I can think of from anyone.

12           CHAIRMAN HENDRIE: What do you do with a site that  
13 does not have three of the ten favorable conditions?

14           MRS. COMELLA: Are you asking whether all of the  
15 favorable conditions have to be present to some degree or  
16 another?

17           CHAIRMAN HENDRIE: More or less.

18           MRS. COMELLA: They don't all have to be present.

19           COMMISSIONER AHEARNE: Is there any statement  
20 anywhere that is sort of a converse of what happens if you  
21 have adverse conditions?

22           MRS. COMELLA: You mean a presumption of  
23 acceptance if they are all present?

24           COMMISSIONER AHEARNE: Yes.

25           MRS. COMELLA: No, there isn't.

1           COMMISSIONER AHEARNE: Similarly there is no  
2 statement that would say that the absence of some of all or  
3 a large number of the potentially favorable conditions would  
4 be --

5           MRS. COMELLA: --regarded as an adverse condition?

6           COMMISSIONER AHEARNE: Yes.

7           MRS. COMELLA: No. That is a very interesting  
8 point. No, that is not there, but perhaps it should be.

9           COMMISSIONER AHEARNE: I was not suggesting it.

10          MRS. COMELLA: No, I was not responding to it that  
11 way. I was saying that perhaps this is something that could  
12 be given some thought.

13          CHAIRMAN HENDRIE: You see, some of the favorable  
14 conditions are such that they do seem reasonable to me.  
15 "(a) The nature and rates of tectonic processes that have  
16 occurred since the start of the Quaternary Period," how far  
17 back is that?

18          MR. MARTIN: About two million years. It is  
19 basically the time period since mountain building stopped  
20 and nothing much has happened except the Ice Ages. It is a  
21 pretty uninteresting geological time.

22          CHAIRMAN HENDRIE: -- are such that when projected  
23 they would not affect or would favorably affect the  
24 isolation capability of the repository.

25          Because you have phrased it, "would not affect,"

1 as well as "favorably affect," the option which is left is  
2 that those processes, if projected, would affect unfavorably  
3 the ability of the site to isolate waste. Indeed, in that  
4 case, it is not so clear that you can make the case required  
5 under 60.111, or indeed whether under section whether that  
6 is a very important consideration. So that one is okay,  
7 good.

8           Let's get down to some of the others. "Mineral  
9 assemblages that, when subjected to anticipated thermal  
10 loading, will remain unaltered or alter to mineral  
11 assemblages having increased capacity." I am not sure  
12 whether this is the same kind of thing or not, if they alter  
13 under thermal loading to be unfavorable, I guess one has to  
14 say how unfavorable before you know if you have got a no  
15 go.

16           You say that these ten-odd possible favorable  
17 conditions in the site, if one or more of them are not  
18 present, that means you don't cross the site off under this  
19 paragraph. On the other hand, if they are all there, you  
20 still don't check the site off under this paragraph.

21           MR. MARTIN: Because you still have the adverse  
22 conditions to get through.

23           CHAIRMAN HENDRIE: You have the performance  
24 criteria and all kinds of other sections.

25           MR. MARTIN: You see, it is important to

1 understand why these are here. Almost all of them bear on  
2 your ability to predict the site performance. The  
3 performance criteria are essentially for just normal design  
4 assumed conditions, but one still has to do some sort of a  
5 prediction into the future as to how the site is going to  
6 act, and that is the backdrop for these sorts of  
7 requirements.

8           If one does not have a stable site, it gets very  
9 troublesome to predict the future. If one has mineral  
10 assemblages that alter in some way that is not understood  
11 very well, then that confounds prediction. So they are  
12 really complementary to the performance objectives, and  
13 provide for each of demonstrating the performance objective  
14 and meeting the EPA standards.

15           COMMISSIONER GILINSKY: By the way, what happened  
16 to the population densities?

17           MR. MARTIN: That was one of the Chairman's  
18 comments that we complied with and struck.

19           CHAIRMAN HENDRIE: They struck that.

20           COMMISSIONER GILINSKY: What was the idea behind  
21 that?

22           CHAIRMAN HENDRIE: The idea is that if we are  
23 going to talk about geologic times and so on, it makes  
24 relatively little sense to talk about population densities.

25           MR. MARTIN: We did get at it by another way,

1 saying that you ought to keep away from areas that are  
2 attractive for resource exploration, and that sort of thing,  
3 which is really a surrogate, it seemed to us, for population  
4 density, if the thing is very unattractive.

5           COMMISSIONER GILINSKY: What is going to keep this  
6 out of the cities?

7           CHAIRMAN HENDRIE: Expense. It is very expensive  
8 to put a repository in the city.

9           COMMISSIONER AHEARNE: But what is going to keep  
10 cities out of it? I think Joe's point is that when you  
11 start talking about a thousand years --

12           COMMISSIONER GILINSKY: We don't have to have it  
13 that long. It could be one hundred years.

14           CHAIRMAN HENDRIE: Remember the argument that I  
15 made to you the last time. When there are two periods of  
16 time which are of interest here. The period of time in  
17 which the present social institutions continue and there is  
18 a societal memory, and so on, and in this period, it makes  
19 very little sense.

20           From the standpoint of keeping people from  
21 intruding into the repository, one of the best places to  
22 have it, as I pointed out to you, is under Manhattan. You  
23 could not build it under Manhattan as a practical matter  
24 because of the expense of procuring the right-of-way, then  
25 providing the protection needed for material to come in and

1 the operation to go on, and so, it all would be prohibitive.

2           So as a practical matter, you are not going to  
3 build it under Manhattan. On the other hand, if you want a  
4 place where human intrusion will be noticed and monitored,  
5 at least through the survival of the present society, By  
6 George that is the place. There are people, and things go  
7 on around the clock.

8           On the other hand, once you get out to geologic  
9 times, you are saying, don't build it here, muttering about  
10 low population density in 1985 just has no meaning with  
11 regard to where cities will be sited.

12           COMMISSIONER BRADFORD: What about saying,  
13 reasonable assurance of low population densities for -- I  
14 don't know what the right number is -- one or two hundred  
15 years, or at least the period in which the thing is being  
16 loaded up.

17           CHAIRMAN HENDRIE: I see no reason to set up a  
18 standard which --

19           MR. MARTIN: Another point of reasoning we had on  
20 deleting that is that it is certainly one of the factors  
21 that will be balanced and weighted in the NEPA evaluation.  
22 So that was another thing that led us to not agonize too  
23 much on taking this out, as it will be taken into account in  
24 that form, and maybe that is a better way to consider this  
25 one.

1           COMMISSIONER BRADFORD: But how does it get in  
2 there, Jack?

3           CHAIRMAN HENDRIE: Because the environmental costs  
4 are higher if you deal with a population where you have to  
5 move a lot of people around during the time that you are  
6 building and operating the facility, and up through  
7 closure.

8           COMMISSIONER BRADFORD: I am assuming that, in  
9 fact, even medium size communities are unlikely to be the  
10 direct host. That is, no one is going to take the park in  
11 the center of a city of even 50,000 as a repository site.  
12 The real question is whether there is a concentration of  
13 population of some size a relatively short distance away, in  
14 a direction that one should worry about.

15           I would think that there is some way to say that  
16 either the presence of such a group is an unfavorable  
17 characteristic, or the absence is a favorable one.

18           COMMISSIONER GILINSKY: You are going to have a  
19 lot of surface activity at one of these sites at least for  
20 some years, and do we really want to do that in the middle  
21 of Manhattan.

22           COMMISSIONER BRADFORD: It is not really the  
23 middle of Manhattan.

24           CHAIRMAN HENDRIE: If you provide me the  
25 transportation corridor and deed Central Park to me, and so

1 on, and eliminate various other things, the Manhattan just  
2 may in fact be an ideal piece of granite, I don't know. But  
3 as a practical matter, you know that you are not going to do  
4 that.

5 From a health and safety standpoint, although the  
6 curie levels are large, they are in forms that just don't  
7 travel easily. You are going to have this stuff well tied  
8 up, and you don't have driving as there potentially are in  
9 the reactors.

10 From a public health and safety standpoint,  
11 population density to my mind just does not cut much here.  
12 What you are concerned about is having a reasonable working  
13 areas and control over them, and one should have those, so  
14 it is not a safety problem.

15 COMMISSIONER GILINSKY: Where does the requirement  
16 on the working corridor come in here?

17 CHAIRMAN HENDRIE: The transportation aspects will  
18 have to be considered in the environmental impact  
19 statement. There are certain costs associated with these  
20 things.

21 COMMISSIONER GILINSKY: I must say that I find it  
22 very odd that in these hard and fast requirements of  
23 favorable condition that we don't include low population  
24 density. That seems very peculiar to me.

25 CHAIRMAN HENDRIE: Because low population density,

1 as far as you can control it in this regulation and by the  
2 siting of the repository has essentially no meaning over the  
3 lifetime of the repository.

4           COMMISSIONER GILINSKY: I think that it has a lot  
5 of meaning when you are filling up the repository.

6           COMMISSIONER BRADFORD: Let me suggest a  
7 formulation here that we did the other day on an unrelated  
8 matter, which is that on something like this, I feel that  
9 there ought to be some mention of low population, at least  
10 for purposes of getting comments, that we just cite  
11 Commissioners Gilinsky and Bradford are interested in  
12 comments on the low population density standard here, and  
13 the Commission therefore requests comments on those as  
14 well.

15           COMMISSIONER AHEARNE: I would just as soon say  
16 that the Commission is interested in comments on that.

17           MR. MARTIN: We could get comments on having a  
18 paragraph that would implement it. It might be  
19 interesting.

20           Shall we go through the rest of the paper?

21           CHAIRMAN HENDRIE: Where do I leave these  
22 favorable conditions? How do I understand from this that  
23 not all of them are prerequisites?

24           MR. MARTIN: We do have an introduction on page 37  
25 that does discuss an appropriate accommodation.

1 MRS. COMELLA: There is a discussion in the  
2 supplementary information on page 14 as well of the  
3 favorable and unfavorable characteristics.

4 COMMISSIONER AHEARNE: Which version?

5 MRS. COMELLA: I was going to say the top one. It  
6 is the original 267, and I don't believe we have made any  
7 changes to that particular section. Under siting  
8 requirements, there is a very brief discussion there.

9 CHAIRMAN HENDRIE: "Cannot be made absolute  
10 requirements, and so on." It may be that the words in the  
11 supplementary information as well as the phrasing of the  
12 language in 60.122 can solve the problem, but I guess it is  
13 not so clear from the words themselves to me that that is  
14 the case. That tells me that it is the staff's attempt, and  
15 perhaps it will serve as legislative history on this, I  
16 don't know.

17 Over on the unfavorable ones, here the presence of  
18 any one of these takes out a site.

19 How do I show that there is no potential for  
20 mining at a site?

21 MRS. COMELLA: Part of that would arise out of  
22 your resource assessment and some of the inferences that one  
23 would draw from that, I would think.

24 CHAIRMAN HENDRIE: I am looking at (3) under  
25 adverse conditions in the geologic setting, changes in the

1 hydrogeology, groundwater withdrawal, extensive irrigation,  
2 and subsurface injection of fluids, underground pump  
3 storage, underground military activity, or mining.

4           You can certainly prevent mining or underground  
5 military activity during the period in which there is  
6 continuity of the records, and continuity of human  
7 institutions, and so on. I don't read the adverse condition  
8 to be so limited.

9           What are you going to do with a contention that  
10 people are going to want to mine granite from this location,  
11 starting a thousand years in the future because by that time  
12 they will have discovered some great use for granite?

13           I keep wondering if the proposition we have in  
14 hand here constructs a framework which, well meant --

15           MR. MARTIN: You have to read the first sentence  
16 of the requirement which is "Potential for human activity to  
17 significantly affect the geologic repository through changes  
18 in the hydrogeology." You may be able to make a showing  
19 that even if mining takes place, it would not bring about  
20 unfavorable hydrogeologic conditions.

21           CHAIRMAN HENDRIE: Do you think you could show  
22 that?

23           If can get a contention accepted that some future  
24 generation will want to mine granite from a repository, do  
25 you think you have a chance of proving, well, that will not

1 change the hydrogeology in ways we can't foresee, hence,  
2 cause unfavorable conditions?

3           MR. MARTIN: No, but I think this sets this up to  
4 deal with it in the best possible way. It would seem to me,  
5 let's say, if there were minable types of resources in the  
6 area, and let's take a more realistic case that there is oil  
7 or something nearby in the area, how does one deal with  
8 that? That was our problem, we just could not ignore it and  
9 leave it to happenstance.

10           So, instead, we listed it as, okay, face up to the  
11 problem. If you have got that kind of a situation, it is an  
12 adverse condition, and you are going to have to show either  
13 that it doesn't affect the repository or it is more than  
14 compensated by these other more positive attributes, in  
15 accordance with the formula a couple or three pages further  
16 along.

17           I think that this is the dilemma on almost all of  
18 these siting issues, whether it be resource competition, or  
19 hydrological. I can think of one site where there are  
20 hydrological problems with, and another one where there is  
21 volcanic activity. We just did not see that we could ignore  
22 them, and instead we tried to set up a set of machinery to  
23 recognize and resolve the problem if possible, and also  
24 bearing in mind that we have a number of sites to work  
25 with.

1           CHAIRMAN HENDRIE: What worries me is that in  
2 setting up to deal with it, so called, you set up a machine  
3 which is intrinsically incapable of coming to a positive  
4 finding.

5           COMMISSIONER BRADFORD: But isn't that the point  
6 that has been made in two other respects. One you made the  
7 other day with regard to the need to specify that what we  
8 are talking about is reasonable assurance. Jack has also  
9 made it repeatedly in individual choices throughout the  
10 rule, keeping in mind the question of whether the criteria  
11 he is setting are in fact inherently provable.

12           In other words, will not be able, either now or  
13 when the Commission closes on the final rule, to sit here  
14 and guarantee the rationality, I guess, of our successors.  
15 But if somebody comes in with a contention having to do with  
16 the likelihood of a granite mine in a thousand, that  
17 contention, like any other than can be formulated around any  
18 one of the provisions in here, is going to run into the  
19 reasonable assurance rubric, and then the specific  
20 criteria. If it turns out to be a sufficiently likely  
21 event, then the site is not going to pass muster. If it  
22 turns out to be sufficiently unlikely, it is.

23           But this one item here doesn't seem to me to give  
24 rise to that problem any more than an unlikely contention on  
25 the wage package or on the 10 to the minus 5 status.

1           CHAIRMAN HENDRIE: But the way this is set up  
2 doesn't quite set it up the way I would prefer to set it  
3 up. I would prefer to see some language along the lines in  
4 here that there is a presumption that mining will not occur  
5 unless there are identifiable resources that have the  
6 economic value in the present society and can be reasonably  
7 projected to have economic value in future societies  
8 sufficiently unique so that you would mine this site.

9           That is, if you want to come in and argue with me  
10 that people will find a use for granite, and they will want  
11 to dig it up here, and you leave the rule so that it just  
12 says the potential for mining is an adverse condition that I  
13 have to somehow overcome by showing that I have  
14 characterized it adequately -- What do I do if it is  
15 granite, and what else do I know, including the extent to  
16 which the condition may be present. Granite all over the  
17 repository, is it still undetected? No, it is detected.

18           I am now at the mechanism for dealing with this  
19 difficulty.

20           MR. MARTIN: We go on to the next page to deal  
21 with the mining thing explicitly, and essentially resolve  
22 that problem by saying that you should not have resources  
23 that are of any greater value than you can find elsewhere.

24           Maybe what we could do is just scrub mining on  
25 page 39, and leave it to be dealt with under the middle of

1 page 40, item (3).

2 CHAIRMAN HENDRIE: It is a possible out.

3 MR. MARTIN: What we had over here, we were not  
4 focusing on mining per se, we were talking about mining, and  
5 dewatering activities. Often they may dewater several  
6 hundred thousand gallons a day, and if this is going to  
7 upsets the hydrological basin and cause some screwy  
8 hydrological problem, that is what we are getting to there,  
9 and not actual penetration into the repository, which is  
10 dealt with over here.

11 MR. WOLF: It is possible to fix it in that  
12 (a)(3), you could stick in that it is not limited to  
13 reasonable foreseeable events such as, if that is the  
14 concern.

15 CHAIRMAN HENDRIE: I guess the best thing to do is  
16 to leave it to think about it.

17 As I go through and through this thing, it seems  
18 to me that I keep running up against places where I am  
19 afraid the words construct a barrier that we are not going  
20 to get over.

21 MRS. COMELLA: One of the problems here is that it  
22 begins to get at the human intrusion problem, which is a  
23 very difficult problem to grapple with because of the  
24 question, how do you deal with it? If it is mining,  
25 presumably it is deliberate, but is it in the face of

1 knowledge or the absence of knowledge.

2           We have tried to lay out a policy discussion of  
3 the question of human intrusion because I think really one  
4 has to come at it from that way, and it begins on page 9 of  
5 the supplementary information. Perhaps a way of coming at  
6 this would be to focus specifically through asking for  
7 comment on how we have come at the resolution of the human  
8 intrusion problem.

9           I think that it is going to be there in any  
10 hearing because it could potentially be an Achilles' Heel in  
11 how you deal with it. Someone can always raise a "What if,"  
12 and that is one of the "what if's" that is so hard.

13           CHAIRMAN HENDRIE: Of course, in a regulatory  
14 climate, what I would suggest is that one say, "Wait a  
15 minute, the alternative to putting this stuff down in this  
16 repository is to have it sitting around in 70 or 100 fuel  
17 pools for thousands of years, is that better? No, it is  
18 better to put it down in the earth with some care."

19           Having done that, and having thus made as good a  
20 provision for it as we can at the present time, never mind  
21 intrusion. They will either intrude or they won't, and they  
22 will either intrude substantially, or a delicate probe and  
23 then get back out.

24           All we can say is, we provide as good archiving as  
25 is reasonable, and the monument on the property is as

1 reasonable. We will have dealt then for future generations  
2 by and large better than they have dealt in the past for  
3 us. But you can't do everything, and putting the stuff in  
4 the ground is sufficiently better than leaving it laying  
5 around on the surface, so that you are just going to have to  
6 live with human intrusion possibilities.

7 I am not sure but what in fact the regulation  
8 wouldn't be a good deal healthier if one took that attitude,  
9 and to lay it out for comment.

10 MRS. COMELLA: I think that we have done something  
11 along those lines, perhaps you would want to focus comment  
12 on that, because that was always there, the probability of  
13 human intrusion, one might as well set it at one, and then  
14 say, "How do you deal with this in the regulatory  
15 perspective?"

16 I think the arguments that you have laid out are  
17 the way to go, and I think that we have done something along  
18 those lines in the supplementary information.

19 COMMISSIONER AHEARNE: Perhaps you could write it  
20 more explicitly then, and ask for the comment.

21 MRS. COMELLA: Would you like that?

22 CHAIRMAN HENDRIE: I think it would be a help in  
23 the document, if it is going to serve.

24 There are a batch of places here in this proposed  
25 rule for comment, where we really need comment. I get the

1 real feeling in talking to people outside the agency that  
2 once this thing goes out for comment that there are all  
3 kinds of things that are cast in concrete, and that it is a  
4 pro forma step. That neither we nor anybody else will be  
5 able to retreat from measures proposed in this thing, and  
6 that is very difficult.

7           MR. MARTIN: I think the track record of going out  
8 for comments for the agency is that unless there are  
9 alternatives, usually what goes out for comment ends up  
10 being the final version.

11           CHAIRMAN HENDRIE: I think that is why in part  
12 people feel as they do. Whereas there are a batch of  
13 propositions of which this one of human intrusion is but  
14 one, where the Commission needs in the worst way a  
15 substantially greater interaction than it has had.

16           I think that it would be helpful to throw a  
17 paragraph or two pointing out that while the proposed rule  
18 deals with human intrusion by requiring showings about it in  
19 all its various forms, and reasonable assurance that will  
20 not upset anything, that there is rather another point of  
21 view that could be taken.

22           That is, we just won't argue about it. It is not  
23 an arguable point in the licensing of this proposition  
24 because of the rather unique characteristic of this  
25 licensing action compared, I guess, to most others that I

1 know about, except maybe the TMI II clean up. That, By God,  
2 almost anything you do along this line is a whale of a lot  
3 better than not doing anything.

4           COMMISSIONER BRADFORD: Except that if you start  
5 approaching the rule that way, none of the other criteria  
6 stand up very long either. I don't disagree with the point  
7 you make.

8           CHAIRMAN HENDRIE: That is right, you could drive  
9 this far enough and say, Boy, any hole in the ground is  
10 better than no hole in the ground, so never mind these  
11 criteria. That would run off the table of reason on the far  
12 side quite as vigorously as we may be beginning to get on to  
13 it on the near side.

14           COMMISSIONER BRADFORD: One place the point will  
15 get picked up again is in the NEPA statement. That is one  
16 of the alternatives will not to implace the waste in a  
17 long-term repository. Certainly all the points that you are  
18 making will get made in that context.

19           CHAIRMAN HENDRIE: Yes.

20           COMMISSIONER AHEARNE: I think it would be useful  
21 to make it a little more explicit in raising that as a  
22 potential.

23           Certainly one of the most unique features of this  
24 is, we are sitting in a very tiny slice of time, and we are  
25 trying to describe sites by what has happened over previous

1 millions of years, and we are trying to predict what will  
2 happen to sites over tens of thousands of years, and we are  
3 sitting in this very minuscule portion of that.

4           CHAIRMAN HENDRIE: It is even true with regard to  
5 the engineered system where we want to talk about a  
6 thousand-year container, and what will be presented by way  
7 of the available evidence is corrosion data in elevated  
8 temperature conditions, which presumably give some elevated  
9 rate of the corrosion data, and people are going to have to  
10 wave hands over a thousand years on this one.

11           If you were deciding whether there ought to be  
12 waste, you might say, well, the higher standard prevails,  
13 otherwise we will not have waste. I am sorry, that is not  
14 the situation, we have got waste, and a lot of it. So doing  
15 reasonable things with it is much better than not doing  
16 anything.

17           I think that in the supplementary information it  
18 would be very helpful to call out that kind of an  
19 alternative approach to human intrusion, and the approach  
20 that would be reasonable to take would be, of course, to  
21 require good, vigorous archiving, monumenting, and marking  
22 of the site, and so on.

23           Common sense would suggest you ought to do  
24 everything that you can to encourage people not to dig into  
25 it, but having done so, then I am not sure how much good it

1 does to argue at the hearing about people's speculations, on  
2 the one hand, that those measures will be inadequate in the  
3 future, and other people's speculations that they will be  
4 adequate. I just don't know that it gets you anyplace, and  
5 you might be better off to do without it.

6           John, you had a stab. I had a stab. Peter, do  
7 you have something?

8           COMMISSIONER BRADFORD: I do, Aside from the  
9 various memos that I have been raining down on you in the  
10 last couple of weeks, there are couple of things that are in  
11 the paper that came in last night, one of which is on page  
12 28 of the draft, and page 29 of the paper that came in last  
13 night.

14           I have no problem with the proposition that what  
15 is required in all cases is reasonable assurance, and that  
16 reasonable assurance as you get out into the ten thousandth  
17 year will be something very different than it means when you  
18 are in the repository loading period.

19           I don't think I would include the specific phrase,  
20 "rigorous proof of their satisfaction may not always be  
21 achievable." I don't think you lose anything if you take  
22 that out, and just leave the sentence as it is. I have a  
23 similar problem in the next paragraph, but let me stop with  
24 that one.

25           COMMISSIONER AHEARNE: I guess I would have said,

1 "rigorous proof of their satisfaction will not be  
2 achievable."

3 CHAIRMAN HENDRIE: I think that it is guaranteed.

4 COMMISSIONER BRADFORD: The point is, as to some  
5 of the propositions, I take it that you would demand a  
6 fairly high degree of proof.

7 COMMISSIONER AHEARNE: But rigorous proof will  
8 never be achievable in the technical sense of proof. You  
9 will not get that.

10 CHAIRMAN HENDRIE: I think where you are going to  
11 have rigorous proof will be in things like, does the Federal  
12 government own the site, or doesn't the Federal government  
13 own the site.

14 COMMISSIONER BRADFORD: There is something about  
15 saying that he won't be able to achieve rigorous proof, it  
16 seems to me almost to be an invitation, I don't know, to  
17 sloppiness, or slipshodness in the proofs offered.

18 I don't disagree with the proposition, but I just  
19 don't feel right about putting out a rule that says that we  
20 understand that --

21 COMMISSIONER AHEARNE: I would have no problem  
22 with deleting from "while" up to "achievable," but for the  
23 opposite reason. To me the statement implies that there are  
24 some of them that the goal is to get rigorous proof, and  
25 although in some cases you can't, in general you want to,

1 and I don't think you can get it.

2 I would have no problem with saying that for the  
3 Commission to find that there is no unreasonable risk, you  
4 must have reasonable assurance.

5 CHAIRMAN HENDRIE: I would like to supply you some  
6 expanded words for argument.

7 COMMISSIONER AHEARNE: Okay.

8 CHAIRMAN HENDRIE: I have been trying to rewrite  
9 that section to carry two thoughts. First, instead of going  
10 through and putting reasonable assurance in subsections of  
11 the proposition, why the choice was to have sort of an  
12 inclusive statement here as to what we can conclude is  
13 assurance criteria, and we would all understand that.

14 Then secondly, the more I contemplate the hearing  
15 circumstances, and so on, and try to think about what I need  
16 for reasonable assurance on the proposition that a given  
17 isotope won't leak at a rate greater than a hundred thousand  
18 per year at year ten thousand, etc.

19 COMMISSIONER BRADFORD: That is the point I was  
20 trying to make earlier. My understanding of this is, and  
21 stop me if I am wrong, that the staff in setting these  
22 criteria have kept provability very much in mind, that is, a  
23 thousand year travel time is apparently a relatively  
24 provable travel time, even though one might like ten  
25 thousand or a hundred thousand.

1           CHAIRMAN HENDRIE: I think that the thousand year  
2 travel time is probably, of the subpart performance  
3 requirements, the most clearly demonstrable.

4           COMMISSIONER BRADFORD: Isn't it true in the other  
5 cases as well, you don't have criteria in here that you  
6 expect would be unprovable, at least among the major  
7 criteria for the package, the engineered system?

8           MR. MARTIN: I think that is correct. We have  
9 been very much motivated by picking those things that would  
10 lend themselves to some sort of basis where we could arrive  
11 at a consensus. Is it rigorous in the sense that one would  
12 prove an electrical circuit is going to work; no. Rigorous,  
13 I use that word quite often, it is the kind of word we would  
14 want to use on proving the overall -- It will not be the  
15 type of rigorous work that most engineers are used to  
16 doing.

17          MRS. COMELLA: I think proof frequently implies  
18 something that is incontrovertable in the sense of certitude  
19 when you finish you finish your derivation, and that is  
20 simply not what we are talking about here.

21          COMMISSIONER BRADFORD: What you are really saying  
22 is some phrase like, reasonable assurance in light of the  
23 nature of the evidence and time periods involved is what the  
24 Commission must have. .

25          MR. MARTIN: Yes.

1           COMMISSIONER BRADFORD: I would prefer a phrase  
2 such as that. I guess I could swallow the rigorous proof  
3 phrase if it were followed by some other phrase, and maybe  
4 this is what your proposal does, which says, "However, the  
5 applicant is expected to do the best he can."

6           CHAIRMAN HENDRIE: I will tell you what, I have  
7 some draft words, but I prefer to scratch a little bit more  
8 and get them out to you rather than read them off the back  
9 of the sheet for consideration.

10           What I was aiming for was trying to construct a  
11 standard of proof, or a standard for findings for these  
12 long-term things. It just seems to me that the level of  
13 assurance that you are going to have for a thousand year and  
14 many thousand year propositions is just inevitably going to  
15 be less than, for instance, will a pressure vessel stand a  
16 number of stress cycles from a fatigue standpoint expected  
17 in a 40-year life time.

18           The problem of the thousand and many thousand year  
19 events and performance, and so on, just seems to me to have  
20 intrinsically a lower level of certainty about it. I am  
21 afraid that unless we anticipate that in the rule, recognize  
22 it and try to provide for it, that we end up formulating a  
23 rule, with the best possible intention in the world, which  
24 then becomes an impossible barrier.

25           As I say, this is a licensing situation in which

1 the public safety is best served by licensing on the best  
2 effort basis that we can make to be sure. But it is not  
3 like other things where not licensing represents a safety  
4 base with regard to a given project -- it is safe from  
5 thereon, while it is getting less safe, the question is, how  
6 much can you stand.

7           It seems to me that if we don't build in the  
8 awareness of that circumstance in the rule, we may be  
9 constructing a maze from which there is no escape.

10           COMMISSIONER BRADFORD: There is nothing in the  
11 procedural rule on the standard of proof.

12           COMMISSIONER GILINSKY: I don't think so.

13           MR. MARTIN: We have some reasonable assurance, it  
14 is reasonable risk.

15           CHAIRMAN HENDRIE: For the construction  
16 authorization, don't you?

17           MRS. COMELLA: Yes.

18           CHAIRMAN HENDRIE: When you refer to subpart B.

19           MRS. COMELLA: That is correct.

20           CHAIRMAN HENDRIE: Where it says that there must  
21 be reasonable assurance that you can handle the stuff and  
22 tuck it away, and that everything will come out all right.

23           MRS. COMELLA: Then at waste implacement, it is  
24 affirmed, but in a different manner. It is after looking at  
25 what has gone on during the construction period, and

1 comparing it against what was intended, then that is what  
2 the basis for that decision is, if I recollect correctly.

3           COMMISSIONER BRADFORD: I think that it is  
4 important to keep that in mind because we don't want the two  
5 rules to get cross-ways with each other as to what the  
6 standards would be.

7           MRS. COMELLA: It is a very succinct expression,  
8 if I remember. I don't think that there was a great deal of  
9 elaboration of it, if any, in the supplementary information  
10 either.

11           MR. WOLF: As I understand any adjudication under  
12 the APAA in accordance with both Commission decisions and  
13 court decisions, the ultimate standard of satisfying the  
14 criteria is a showing by the proponent of the order by a  
15 preponderance of the evidence that whatever standards you  
16 have specified have been met. I think that that  
17 preponderance of the evidence underlying the basic principle  
18 does apply in this adjudication as well as in others.

19           CHAIRMAN HENDRIE: How would you judge the  
20 preponderance of the evidence if for each geologist who  
21 thinks the release rate will be at or less than a part at a  
22 hundred thousand per year, there is an equal and opposite  
23 geologist who thinks it is not. The credentials for these  
24 people, you know, they went to appropriate universities, and  
25 worked in appropriate fields.

1           What are you going to do with a container where  
2 for each metallurgist is prepared to say that the corrosion  
3 data accumulated over these accelerated tests lead him, in  
4 his best professional judgment, to think the container will  
5 last for a thousand year. For each metallurgist of that  
6 kind there is an equal and opposite one who says that his  
7 professional judgment is that it will not last for a  
8 thousand years. Now, where is the preponderance of the  
9 evidence?

10           COMMISSIONER BRADFORD: But if it really were true  
11 that the scientific community were split right down the  
12 middle as to whether the repository was going to work as we  
13 thought it should, then I think it would be pretty hard to  
14 go forward with licensing at that point in time, one might  
15 want more work to be done. But I don't think that that is  
16 what you are likely to see.

17           I think you may find, within the context of a  
18 case, that one side has a geologist or metallurgist or two  
19 who take issue with the applicant's finding. I would be  
20 surprised if we would have an application that got all the  
21 way into the licensing process with 50 percent of the  
22 scientific community thinking that it would not work.

23           CHAIRMAN HENDRIE: But you don't quite get a  
24 chance to get the whole scientific community duly educated,  
25 and then make everybody vote yae or nay. You get, on the

1 one hand, the contractor's and consultants' people of the  
2 Department that will find in favor, and, on the other hand,  
3 you get people who want to go the other way, and are willing  
4 to come and take the time to bring papers and testify.

5           The ability of the board to hear from experts  
6 after the first ten or twenty on each side must run down, I  
7 would think, and I would expect that it would be no great  
8 shakes to produce twenty each way.

9           MR. MARTIN: I think that is exactly the kind of --

10           CHAIRMAN HENDRIE: It is hardly 50 percent of the  
11 scientific community, but a relatively small number, like a  
12 few tens of expert geologists, metallurgists, or  
13 what-have-you. I would expect that without a great deal of  
14 trouble you could produce those kinds of numbers each way.

15           COMMISSIONER BRADFORD: But don't you assume, for  
16 these purposes, that there will have been staff review, and  
17 ACRS review. I can't imagine that this particular board  
18 won't have a geologist among its three member. In essence,  
19 the Commission will have to go at, chew up, digest, and  
20 bring to form of that evidence much as it does other  
21 disputed evidence in its proceedings now.

22           COMMISSIONER AHEARNE: I would also guess that the  
23 Energy Department, if they are smart about their approach,  
24 will do a peer review process of whatever basic submission  
25 they are making, and will have collected a reasonable amount

1 of support from the general scientific community for the  
2 packaging and the engineered barriers that they are  
3 proposing.

4 MR. MARTIN: I think that the problem that the  
5 Chairman is worried about is just exactly what we have  
6 oriented this rule to avoid. It is to keep away from those  
7 areas that lend themselves to that sort of 50 percent  
8 agreeing and 50 don't, and there is no in world we know to  
9 resolve it. But instead, direct attention toward those  
10 areas that are relatively more provable.

11 I think that it is a very good observation, and it  
12 really gets to the heart of what we have been trying to  
13 avoid.

14 COMMISSIONER BRADFORD: I guess you have just said  
15 better the point I was trying to make earlier. It is not  
16 that all the criteria that you have chosen are necessarily  
17 susceptible to proof, so much as you have based the specific  
18 criteria in the areas that are, and stayed away from the  
19 ones that seemed to be quagmires.

20 MR. MARTIN: That is right, and it is best to  
21 recognize the quagmires in the beginning, rather than wait  
22 for years and get the whole proposal based on something that  
23 is inherently not provable.

24 CHAIRMAN HENDRIE: I must say that I wish there  
25 was more agreement out there in the field as to which the

1 licensability of the proposition improves, because there is  
2 a constituency out there that feel that the staff approach  
3 makes it intrinsically less licensable by a substantial  
4 margin. I will be drat if I can figure out which side is  
5 right.

6           What I would like to see is a rule that improves  
7 the changes that you can license a repository, because I am  
8 absolutely convinced that the desirable course for mankind  
9 is to start tucking this stuff away, rather than leaving it  
10 laying around.

11           COMMISSIONER BRADFORD: But there is a point where  
12 you carry that proposition too far. You wind up with a rule  
13 that is so bland, and so clearly just a four-lane highway to  
14 a license, that both the potential host state and the  
15 general public between now and then is certain that the  
16 process is without credibility, and does not protect them  
17 very much. Then, you actually have a harder time getting a  
18 facility licensed in a useful way, than you would with a  
19 rule that people can have more faith from the outset.

20           CHAIRMAN HENDRIE: True. In fact, if there were  
21 no licensing process, and one was simply the head of a  
22 project to do a good workman-like job of putting it away,  
23 you would take very extensive precautions. What we would  
24 like to do is to see those things imbedded in an appropriate  
25 rule here.

1           But the intrinsically different nature of the  
2 licensing action here, from a public policy standpoint, is  
3 something that I think we need to have in mind as we look at  
4 these provisions.

5           I keep hearing from folk outside the agency who  
6 seem to feel that, as Shelly suggests in his letter, that we  
7 ought to stick with the overall performance requirement,  
8 meet the EPA standard, and not be so definite about the  
9 subsections, about the thousand-year container, and the  
10 hundred part, and the hundred thousand per year leak rate.

11           In principle, I suppose, they would also object to  
12 the thousand year travel time, but people don't seem  
13 bothered by that, because I think most people think that any  
14 reasonable set of geology will have a thousand year travel  
15 time. So, it is sort of a freebe, and I guess people don't  
16 complain about that.

17           The other two there is great groaning about, and I  
18 have a lot of trouble sorting out whether the staff has read  
19 the situation correctly, and that the licensibility of a  
20 reasonable repository proposition is, in fact, enhanced by  
21 taking these sub-requirements that say, to have a good  
22 container, the design objective is a thousand years, and  
23 then the other subsections.

24           Or, whether, as the other side argues, that that  
25 is an unnecessary and burdensome over-constraint, and that

1 while it would be fair enough to say, "Look, we want the  
2 repository to have some subsections to it, the container,  
3 the overpack, the engineered system, the geologic setting,  
4 and so on, and the contribution of each of those to  
5 isolation of the waste should be considered," and so on.  
6 What you ought to do then is simply have the overall EPA  
7 requirement as the licensing requirement.

8 I must say, I have a lot of trouble telling which  
9 gets us there in the best shape.

10 COMMISSIONER GILINSKY: We talked about this  
11 several times. It seems to me that since the requirements  
12 still don't get you all the way, you still have several  
13 orders of magnitude to account for.

14 COMMISSIONER AHEARNE: Not for all the isotopes.  
15 Some of them easily get you there. Some isotopes it will,  
16 and some it won't.

17 CHAIRMAN HENDRIE: The shorter-lived stuff, I  
18 think if you meet -- For some of the isotopes, the  
19 thousand-year container meets the EPA standards. For other  
20 isotopes, you need that plus the low leakage, I guess.

21 COMMISSIONER AHEARNE: It is a mixed bag.

22 CHAIRMAN HENDRIE: For others I guess, in addition  
23 to the water travel time, one or two orders of magnitude  
24 hold up in the rate of some isotopes getting out.

25 MR. MARTIN: I think the whole thing comes down to

1 a question of the single merit of a figure, and that, of  
2 course, is the way to go. On the other hand, that leaves  
3 completely open the question of multiple barriers, defense  
4 in-depth, and then one is in the position of waiting a few  
5 years until we get an application to find out whether the  
6 right barriers have been picked, whether the repository that  
7 we all want to license is, in fact, based upon technical  
8 work that is defensible and you can reach a consensus on.

9           We have elected to try to use a reasonable  
10 approach, identify what those multiple barriers should be as  
11 at least a minimum, to ensure some diversity to the system,  
12 and try to steer the department towards those things which  
13 are more inherently provable, and away from quagmires.

14           I guess, from my standpoint, to wait for a few  
15 years to see if they move in the right direction is, at  
16 least in my mind, relying on hope, primarily.

17           COMMISSIONER AHEARNE: You also may have to wait a  
18 couple of years for the EPA standards to come.

19           MR. MARTIN: That is right.

20           MRS. COMELLA: For instance, on the question of  
21 the barriers that we have identified, when you look at a  
22 repository system, any repository system is going to have  
23 those particular features.

24           The waste is going to be put in a hole in the  
25 ground, and now do you do with that? You can engineer it in

1 such a way to take advantage of the fact that you can buy  
2 something by thinking about how you construct that hole in  
3 the ground. You have to get the waste down there, so the  
4 implication is that you are going to have some forms and  
5 packaging if only to get the waste down there implaced. So  
6 it is a very natural component of any repository system. We  
7 thought about what do you buy from enhancing that in some  
8 way, so that it makes the problem of regulation more  
9 practical.

10           Again, the site, you have to choose the site, so  
11 think carefully about what the site is, and what sort of  
12 properties the site might have, so that not only do you have  
13 a good site that will contribute to isolation, that is a  
14 technical aspect of it, but a site that will let the  
15 regulatory agency understand what it is contributing.

16           That is sort of the way we have come at the  
17 problem. How can, given the fact that these barriers are  
18 going to be there, how can we use that in arriving at an  
19 understanding of how the repository is going to function, so  
20 that in fact we can arrive at a licensing decision.

21           COMMISSIONER GILINSKY: I was going to say, since  
22 there are still some orders of magnitude that you have not  
23 defined, some geochemistry, or whatever, it doesn't seem  
24 likely to me that one is going to be backing away from these  
25 standards, particularly when you have to demonstrate the

1 final results with some confidence.

2           So I think that you will be driven to relying on  
3 the kinds of things that are more definable and more  
4 analyzable, such as the container, and the repository  
5 characteristics..

6           We talk about whether this is an over-constrained  
7 system or not, and it doesn't seem to me that it is an  
8 over-constrained system. In setting the minimum  
9 requirements, it doesn't seem to me that they have been set  
10 unreasonably high.

11           I can't imagine, when you are talking about a  
12 thousand-year package, that one is going to want to go to a  
13 ten-year package. There may be some adjustments you may  
14 want to make conceivably if you were not constrained in  
15 this way, but is there a lot of difference between a five  
16 hundred-year package and a thousand year package.

17           CHAIRMAN HENDRIE: I would not think so, frankly,  
18 between a five hundred year and a thousand hundred year  
19 package.

20           The kind of agonized complaint that I hear is that  
21 some of the package people think they are not going to be  
22 able to prove that their container will container all the  
23 radionuclides through the first thousand year. What they  
24 say is, "Look, we are going to be able to come in with sort  
25 of the generalized experience of materials engineering over

1 the past 40 years," and say, "we know some things about  
2 ours." And then we will have some specific corrosion tests  
3 in characteristic repository, like saturated media, and  
4 these will have the characteristic of so many mils for the  
5 first year, and then the rate drops to some equilibrium.  
6 The will have done them at various temperatures. And they  
7 will wave hands over what the acceleration rate of the  
8 temperature means, and give you a lot of explanations about  
9 the thermodynamics constants that neither you nor I will  
10 understand.

11           When you get all through, there are very concerned  
12 about their ability to make an adjudicatory environment  
13 proof that they have got everything tied up, all  
14 radionuclides for a thousand years.

15           There are all kinds of variabilities that are  
16 there that they are worried about, the range of the  
17 corrosion data, a thousand years is a long time. The fact  
18 that when one says, all radionuclides, one envisions a  
19 manufacturing and emplacement process which is 100 percent  
20 effective with regard to producing in each canister the  
21 quality that was intended to be there in the prototype  
22 design.

23           So they worry that just on the basis of normal  
24 manufacturing quality, distribution, and so on, they will  
25 not be able to show that there cannot be a canister that

1 gets through, and it is out here on the wing, and it is not  
2 nearly as good as the others, and so on.

3 I think that it is mainly the long time. That you  
4 might get over by the way in which you did the manufacturing  
5 and inspection. But the long time over which this assurance  
6 has to be offered really bothers those people.

7 COMMISSIONER AHEARNE: How do they, then, expect  
8 to be able to meet the EPA criteria, or do they expect EPA  
9 criteria to be softened. Because if they can't meet some of  
10 those subsidiary pieces, I am not sure --

11 COMMISSIONER GILINSKY: Each one is counting on  
12 the others.

13 MRS. COMELLA: The proof problem just won't go  
14 away.

15 COMMISSIONER AHEARNE: The Chairman was saying  
16 that he has been hearing from the people who have been  
17 concerned about meeting the pieces.

18 CHAIRMAN HENDRIE: Reasonable assurance, that is  
19 why I have been muttering darkly about reasonable assurance  
20 for some time, and why I want some language which says what  
21 we mean by reasonable assurance for these long time in the  
22 future propositions.

23 John, the answer to your proposition is that I  
24 think the container people, at least the ones that I talked  
25 to, have confidence that they can produce a waste package.

1 which will last a long time, with really very minimal  
2 leakage for some thousand years. But when the contemplate  
3 proving that in the adjudicatory format, I guess they  
4 foresee difficulties.

5           COMMISSIONER AHEARNE: Won't the same difficulty  
6 arise, independent of whether there are any of these  
7 separate thousand year, ten to the minus five pieces, at the  
8 end in their vision?

9           Would they also propose the EPA not be met in the  
10 adjudicatory format?

11           CHAIRMAN HENDRIE: I think, to the extent that I  
12 can interpret what I hear, I think what they would like to  
13 do is to meet the EPA standard with an engineering design in  
14 which a reasonable professional judgment is that you have  
15 met it.

16           Is that the same as the preponderance of the  
17 evidence in an adjudicatory hearing, which you can  
18 reasonably anticipate is going to be long and loud and  
19 pretty contentious. I detect that their concern is that it  
20 is not, and that the latter is a much more awkward burden.

21           COMMISSIONER AHEARNE: I guess perhaps what you  
22 are saying is that they would prefer not to have to fight  
23 that battle on one set of numbers, which is the total  
24 performance, as opposed to the container, the engineering  
25 barrier, --

1           CHAIRMAN HENDRIE: Yes.

2           MRS. COMELLA: But when they came in with their  
3 total system, if it were not constrained by the regulation,  
4 and they got into the adjudicatory hearing, let us say they  
5 wished to take credit for very long periods of time on one  
6 particular engineered system, it would seem to me that they  
7 would still have the "proof" problem left with them.

8           If they wanted to take credit for that long period  
9 of time in their calculation, they would have to be able to  
10 make a showing that indeed it was reasonable to accept their  
11 contention that they could take credit for it. I am not  
12 sure what it buys in the long run, because I don't think the  
13 proof problem goes away.

14           CHAIRMAN HENDRIE: As long as we impose the proof  
15 problem, in fact, it does not really go away because  
16 somewhere among the sub-barriers you have to accumulate the  
17 degree of isolation that the EPA standard mandates, that is  
18 certainly true.

19           What it does do is to give them some flexibility  
20 as to how they apportion between the sub-barriers and, I  
21 must say for reasons that I am not prepared to lay out with  
22 any eloquence because it appears to me, too, that the  
23 problem remains there, but they seem to be very concerned  
24 about the container.

25           I don't know whether that suggests that the people

1 I have talked to know something about container  
2 metallurgical test that I don't know, or whether it is just  
3 that they are all metallurgists and they don't want to come  
4 to hearings, or what it is.

5 I have not talked to the DOE people. I hear from  
6 folks out in the industry.

7 COMMISSIONER GILINSKY: These are the people who  
8 will actually build the containers.

9 CHAIRMAN HENDRIE: I don't whether they would  
10 actually build them, but they are involved. People in labs  
11 who are working on the program, and have some chunk of it or  
12 another. I am not proposing that what I am hearing is a  
13 carefully balanced and inclusive view across all of the  
14 elements out there. I hear from folks who call in with a  
15 word.

16 MRS. COMELLA: But the heart of the problem seems  
17 to be their not being able to realize in a practical way  
18 what reasonable assurance is going to mean. Is that sort of  
19 the problem?

20 COMMISSIONER AHEARNE: To put it in a different  
21 way, from what I hear, it is a lack of confidence that what  
22 is described perhaps today as what reasonable assurance  
23 means, will also carry through five, seven or ten years from  
24 now.

25 CHAIRMAN HENDRIE: One of the things that has

1 occurred to me because I do have some problems sorting out  
2 whether you folks have read the situation just right, you  
3 know, and tuned it just right. Or, whether there is some  
4 merits to the complaints from the other side that what you  
5 ought to do is to stick with the one overall objective, and  
6 that indeed you can require these subsections, but don't tie  
7 them down to specific requirements. I don't know.

8           One proposition might be to note specifically in  
9 the discussion of the rule that goes out that difference in  
10 point of view as we perceive it. I think Shelly's letter  
11 gives you a nice vehicle, at first glance at any rate, to  
12 have that view consolidated in a single document, to note  
13 the difference in view, to note that the staff has come down  
14 feeling that it is best, on balance, to specify the  
15 objectives, to note that we have tried, as I presume we  
16 will, to make clear that rigorous proof is not to be had  
17 here, and reasonable assurance sorts of things. I hope to  
18 get some language in there.

19           Then to ask for public comment on this particular  
20 point, are we in fact better off framing the requirements as  
21 the staff drafted those, or would we be better off the other  
22 way.

23           COMMISSIONER AHEARNE: The other way being?

24           CHAIRMAN HENDRIE: The other way, to have the  
25 basic regulatory finding that must be made be the meeting of

1 the EPA general environmental standards for repository.  
2 That the way that the NRC would deal with the subsections  
3 would be not to have particular performance criteria for the  
4 subsections, but rather to note that we expect the  
5 repository to have these subsections, and each of them will  
6 have to be discussed, and together they will have to meet  
7 the overall standards.

8           COMMISSIONER AHEARNE: Would you have the staff  
9 put out some kind of a technical guide which would  
10 incorporate those other requirements?

11           CHAIRMAN HENDRIE: If we went that way, you mean?

12           COMMISSIONER AHEARNE: Yes.

13           CHAIRMAN HENDRIE: You mean a Reg Guide with the  
14 staff saying, we think it ought to be a thousand years here,  
15 and ten to the fifth there?

16           COMMISSIONER AHEARNE: Yes.

17           CHAIRMAN HENDRIE: I am not sure. If you are  
18 going to go that way, I am not sure that you would want to  
19 embed as firmly as a Reg Guide imbeds a regulatory position  
20 to go a thousand years.

21           COMMISSIONER GILINSKY: Would the technical rule  
22 then just become the one sentence requirement that they  
23 would have to meet the EPA overall standard?

24           CHAIRMAN HENDRIE: I guess it wouldn't, Vic, any  
25 more than it would if the subsection performance

1 requirements were not in the document that is before me. It  
2 would not collapse to sort of a one-sentence document in  
3 that case. It runs 60-odd pages at present, and if we took  
4 out the performance requirements on the subsections, it  
5 would run 59.

6           COMMISSIONER GILINSKY: I guess I don't  
7 understand. Wouldn't you be dropping all of that favorable  
8 factors, and the unfavorable factors, and all that?

9           CHAIRMAN HENDRIE: No, I don't think so, because  
10 if one decided not to require a thousand year container, for  
11 instance, I don't think one would back away necessarily from  
12 what I regard as an appropriate version, if not the present  
13 version, of the favorable conditions on the geologic  
14 setting, the adverse conditions as appropriate, and so on,  
15 and all the rest of this stuff.

16           COMMISSIONER GILINSKY: I am just opening a page  
17 at random, and it says here, "Instrumentation and control  
18 systems," and there are certain requirements on that. Why  
19 would you keep those, or anything else for that matter. Why  
20 would you have specific inspection, testing and maintenance  
21 requirements?

22           CHAIRMAN HENDRIE: In either version of the rule,  
23 I think, for some of those things from somewhere between  
24 60.122 and 60.130, I think it would go right in the margin  
25 Reg Guide question mark. The further back I go through 130

1 to 134, the heavier I print that. Some of those things, I  
2 think, in either version of the rule may be intrinsically  
3 Reg Guide.

4           You said that there is some commentary, and at the  
5 moment I don't remember the statement, consideration that  
6 discusses the point and asks for comment on whether these  
7 things should be in the rule or Reg. Guide.

8           MR. MARTIN: On the construction, and those  
9 detailed requirements.

10           CHAIRMAN HENDRIE: In particular on that 130 to  
11 134 stuff; right? So you already have it in the rule, but  
12 you are saying, we recognize that some of this stuff might  
13 indeed to Reg Guide if the people think so.

14           But where something was judged to be appropriate  
15 for the rule itself of this kind, then I would not think  
16 that because one had perhaps decided ultimately to go a  
17 system requirement, and not include the specific subsection  
18 requirements. I don't think that things like that  
19 necessarily either go in or come out.

20           COMMISSIONER BRADFORD: How does what you are  
21 suggesting, Joe, go beyond publishing a short paragraph to  
22 the effect that, of course, there is an alternative approach  
23 which would be keyed solely to a specific performance  
24 standard. That is not the Commission's preferred approach  
25 as discussed in a separately published justification,

1 however, the Commission does solicit comments on it?

2           CHAIRMAN HENDRIE: I am not sure that it goes much  
3 beyond that. I don't know whether one might want to try a  
4 stab at, for instance, an alternative formulation of 60.111,  
5 which remember is about three pages of the performance  
6 objectives and sort of is the place where you really get to  
7 the heart of the matter with regard to this point. It might  
8 be useful to take a cut at that, which might serve as an  
9 alternative to get people thinking about it.

10           MR. MARTIN: I think that one of the problems with  
11 that, with trying to now redraft the regulation to be an  
12 alternative is that most of the siting and many of the  
13 design requirements flow from the presumption that you do  
14 have high integrity containers, and you do have low leach  
15 rate. So you don't have to be so stringent on some of the  
16 siting and other requirements.

17           If we take that out, I would not be satisfied with  
18 the siting approach that we have. I think it would have to  
19 be reexamined very closely. I am not sure that it is so  
20 simple as just rewriting the performance objectives, and say  
21 that everything all stays the same.

22           COMMISSIONER AHEARNE: Could you expand on that a  
23 minute, Jack? Are you saying that if you did not have the  
24 thousand year container, ten to the minus five, engineered  
25 barrier, ten thousand year water travel time, that the sole

1 criteria being the EPA, you would not be comfortable with  
2 the description you have in here for the pros and cons as  
3 far as advantageous site criteria and disadvantageous?

4 MR. MARTIN: That is right. For example, I think  
5 the human intrusion problem then gets to be much more of an  
6 issue, with the potential disruption of the repository. I  
7 don't really know, I have not thought it out completely, but  
8 a few things come to mind that get to be a bit of a  
9 problem.

10 I think questions of, is there a fault nearby, the  
11 site gets to be a lot more -- Take the Nevada Test Site, for  
12 example, that gets to be more problematical in my mind,  
13 where the proposed site of interest has several faults  
14 running through it. How much of a problem is that now if  
15 you can't rely on having the waste bottled up during high  
16 danger and uncertainty. I am just not sure where we start  
17 pulling on the string.

18 COMMISSIONER GILINSKY: You have a carefully  
19 crafted document here, and it seems unlikely that you are  
20 going to come up with an alternative in days or weeks that  
21 has met the test that this has in terms of internal  
22 consistency.

23 It is one thing to ask people whether the whole  
24 approach makes sense, and that is what we are doing in  
25 putting the thing out for comment, and we explicitly do

1 that, we explicitly point to an alternative approach. But I  
2 think to come up with another version is something that is  
3 going to take many months.

4 CHAIRMAN HENDRIE: I talk about possibly trying to  
5 frame the guts of how the alternative might look, I would  
6 not contemplate rewriting the whole rule and doing whatever  
7 rebalancing Jack feels is necessary, but would simply  
8 reframe 60.111 as a basis for getting people thinking along  
9 the lines of the alternative, to encourage their comments,  
10 and then just note that whatever other adjustments, if one  
11 went in that way, in other sections of the rule were  
12 necessary to make it compatible would be made.

13 COMMISSIONER BRADFORD: But Joe, it would have to  
14 get have to get reframed at some point, because I think,  
15 then, if the Commission were to go the way that is outlined,  
16 then you would have to go for another round of comment at  
17 the end.

18 CHAIRMAN HENDRIE: Then you would with another  
19 comment round, wouldn't you?

20 COMMISSIONER BRADFORD: I think that that is  
21 right.

22 CHAIRMAN HENDRIE: Wouldn't you want to do that in  
23 any case?

24 COMMISSIONER BRADFORD: Yes. I guess that is  
25 right, if you change the form of the rule, you do become

1 committed to another comment round.

2           CHAIRMAN HENDRIE: Just from the standpoint of  
3 trying to give people a pretty shot at this one.

4           COMMISSIONER BRADFORD: I guess that is why I  
5 would favor just inviting comment on the question of the  
6 approach to the rule itself, without going to any very  
7 extensive redrafting at this point, since if the comments  
8 persuaded the Commission in fact to take the alternative  
9 route, whatever it is, eight or nine months, the whole rule  
10 will be out for comment again anyway. It does not seem to  
11 make much point in having the staff spend much time  
12 reformulating a few of the criteria at this stage.

13           COMMISSIONER GILINSKY: If there are a lot of  
14 people out there who are upset with what we are doing, they  
15 are alert to it. It is not as if we have to point out to  
16 them the alternatives. They can always say that they have  
17 alternatives in mind, and it does not sound as if they are  
18 going to fail to comment.

19           Certainly if we open up some other possibilities,  
20 it sounds to me that we would receive a great deal of  
21 comment on the point.

22           MR. MARTIN: I would not mind seeing some  
23 alternatives proposed by those that don't like it, together  
24 with some discussion of how they think it deals with these  
25 problems.

1           COMMISSIONER GILINSKY: Which is the point of  
2 putting out the thing for comment.

3           MR. MARTIN: We have really heard very little on  
4 this, other than we would really rather not do it. But how  
5 you deal with some of the sites being considered now, I am  
6 not sure how you deal with them, without what we have got  
7 outlined here. Just changing the performance objectives, I  
8 don't think really does it. I think then we would really  
9 have to give a good hard look at this whole siting  
10 question.

11           CHAIRMAN HENDRIE: Where are the siting  
12 requirements?

13           MR. MARTIN: They are those favorable and adverse  
14 conditions. That I think would have to be a much more  
15 absolute thing, rather than just sort of a relative  
16 balancing. I think we have to think in terms of real sites,  
17 how would you apply them? I am not sure how I would apply  
18 them to any of the sites being looked at today, if I could  
19 not fall back on the canisters and the leach rate. It just  
20 has not been thought through.

21           This whole thing has been the result of a couple  
22 of years of discussion, and give and take, public comment.  
23 The performance objectives and the siting things are all  
24 integrally entwined, and they proceed one from the other,  
25 and not independently. I really have not given a lot of

1 thought, I don't think any of us have, as to what if we  
2 proceeded from another basis, how would that affect siting.  
3 I can think of some specifics that trouble me enough.

4           COMMISSIONER AHEARNE: Let me make this  
5 suggestion, Joe, if I can.

6           We are not at the beginning of June. I think we  
7 have go to face the fact that if we want to get a rule out  
8 for comment in the next couple of months, we really ought to  
9 get it out in the next couple of weeks, because after that  
10 there will be a number of new people coming in the  
11 Commission, and I would expect, just practically speaking,  
12 they will want to take a lengthy period of time to go  
13 through if the rule is still sitting here.

14           COMMISSIONER GILINSKY: That would be putting them  
15 in a difficult situation.

16           COMMISSIONER AHEARNE: That is right. I think  
17 they would, just as any of us coming in would, want to take  
18 the lengthy time, or some reasonable time to pull the  
19 understanding together. I think we have got a few weeks,  
20 really, to get the thing out.

21           As you have pointed out, obviously there are some  
22 people who are very concerned about the approach being taken  
23 on the specific details. Perhaps if you could expand a  
24 little bit that portion that is now in the statement of  
25 considerations to pick up a little bit of the concern that

1 you have that this may be an over-specified,  
2 over-constrained approach, and the comments are requested on  
3 the alternative approach.

4           But I think it ought to go on and mention the  
5 concern that Jack has, that going the alternative approach  
6 probably would not merely mean pulling out the ten thousand  
7 years and ten to the minus five, it may well mean a  
8 substantial change in the structure of the siting approach.  
9 But at least it would highlight that we recognize that this  
10 is a real issue, and then get out basically what we have,  
11 because I am really concerned that we have the potential of  
12 coming to a standstill.

13           CHAIRMAN HENDRIE: Let us work on it. I will get  
14 some paper around to you.

15           COMMISSIONER AHEARNE: If necessary, we can take  
16 that one section that you would like to see revised, and  
17 revise those couple of pages that is an example of the  
18 alternative, but it ought to really carry with it the point  
19 that Jack has made.

20           MRS. COMELLA: Also, I think the practical  
21 implication of the alternative formulation, what does it  
22 mean? It is one thing to say, go the system approach, but  
23 how does one realize that in the licensing setting? I think  
24 the feedback from that would be very important.

25           COMMISSIONER AHEARNE: From the licensing point of

1 view, you would then really focus upon the EPA standard,  
2 that would be the sum and substance of the final decision.  
3 Do you have reasonable assurance that you can meet the EPA  
4 standard.

5 MR. MARTIN: But that would focus back on the  
6 geology.

7 MRS. COMELLA: That focuses back on the same  
8 problem.

9 COMMISSIONER AHEARNE: It would focus back on the  
10 same problem, and you would have to go through an analysis  
11 of each of those segments, the package, the barrier, and the  
12 geology.

13 But just in response to your question, as far as  
14 the licensing decision, it would then be based upon  
15 reasonable assurance that the EPA standard is met, as  
16 opposed to currently it is reasonable assurance for separate  
17 pieces.

18 MRS. COMELLA: What I was keying back to you was  
19 what Jack had mentioned about coming in, then, with some  
20 discussion of what they mean. I get it.

21 COMMISSIONER AHEARNE: I am just trying to urge  
22 everyone to see if we can't get closure in the next week on  
23 what is going to go out, because I have a very strong sense  
24 that if we don't, it will be the end of the summer before  
25 anything goes out.

1           COMMISSIONER BRADFORD: I agree fully with that.  
2 In that spirit, I guess I need to know whether there are any  
3 overwhelming problems with the things that I have circulated  
4 in the last few days.

5           COMMISSIONER AHEARNE: Part of the problem, Peter,  
6 is that you have circulated some which were overtaken by  
7 others that you circulated.

8           COMMISSIONER BRADFORD: That is right. My point  
9 is, if we reach that conclusion within a week --

10          COMMISSIONER AHEARNE: I think the staff, at least  
11 as I skimmed, I believe they have accommodated you in many  
12 cases.

13          COMMISSIONER BRADFORD: That is right.

14          COMMISSIONER AHEARNE: I would propose we look at  
15 staff's latest version as the working document, as opposed  
16 to trying to sort out your points.

17          COMMISSIONER BRADFORD: It works well up to a  
18 point. There are a couple of mine that in discussion with  
19 the staff --

20          COMMISSIONER AHEARNE: What I am saying is that if  
21 you could take the staff's latest document and see if you  
22 have any major problems.

23          COMMISSIONER BRADFORD: You want another memo?

24          COMMISSIONER AHEARNE: Yes, I think that would  
25 probably be the most effective way for all of us to address

1 it, if you have any real sticking points on this document.

2           COMMISSIONER BRADFORD: That is fair enough. It  
3 won't be a matter of sticking points. There will be one or  
4 two areas where the staff and I just left it that I would  
5 draft, and they would nod. It is not that there is a  
6 disagreement, it is just that the change has not been made.

7           What does that leave us by way of schedule? I can  
8 get that memo around today, I think.

9           COMMISSIONER AHEARNE: Let's leave it the way it  
10 is.

11          CHAIRMAN HENDRIE: Pre or post last night?

12          There was a memo from Howard having to do with the  
13 relation of this rule to other CFR rules, etc. There was a  
14 recommended clarifying statement to go in on page 11,  
15 immediately before the section on major features of the  
16 proposed rules in relation to other parts of NRC  
17 regulations. I suggest that we just include that in.

18          COMMISSIONER BRADFORD: This is Howard's June 1?

19          CHAIRMAN HENDRIE: Yes. It was that question,  
20 what do you do if you have got AFR on the site, and you  
21 license under this, because this rule talks about --

22          COMMISSIONER GILINSKY: He wants it circulated?

23          CHAIRMAN HENDRIE: I think intrinsically it says  
24 that we will do reasonable things if the matter comes up.

25          COMMISSIONER AHEARNE: If we find a connection.

1           CHAIRMAN HENDRIE: Yes. It says that we would  
2 license under 72, even if located at a repository area,  
3 provided that it is sufficiently separated to be classed as  
4 an independent --

5           COMMISSIONER BRADFORD: Did this one go through  
6 the full staff, and did it cause any problems?

7           CHAIRMAN HENDRIE: I don't know.

8           COMMISSIONER BRADFORD: Did this one cause any  
9 problem as far as you are concerned?

10          CHAIRMAN HENDRIE: Dircks' memo just said that the  
11 ELD has prepared a recommendation which is forwarded  
12 separately, but you did not say whether you liked it or  
13 not.

14          MR. DIRCKS: Howard and I have an understanding.  
15 When he wants to speak completely out on legal issues, he  
16 just sends it on down, but it does not conflict.

17          CHAIRMAN HENDRIE: You don't see any problems with  
18 it?

19          One last thing, "With regard to the respective  
20 authorities of the NRC and the EPA," says Mr. Dircks, "we  
21 understand that the Office of the General Counsel will be  
22 prepared to speak to that issue at the June 2nd Commission  
23 meeting.

24          Can you do it in two minutes or three?

25          MR. HALSCH: I can, except I am not completely

1 sure what the question is.

2 COMMISSIONER GILINSKY: It reminds me of a guy who  
3 told me he could deliver a lecture on any subject as long as  
4 he had two slides which he put in upside down, and by the  
5 time they had sorted it out, the lecture was over.

6 (Laughter.)

7 COMMISSIONER BRADFORD: I should note, Joe, that I  
8 still have a question on (7) as well.

9 CHAIRMAN HENDRIE: I am not sure what the question  
10 was.

11 MR. BELL: This is the follow on sentence where we  
12 said something about following the EPA and thereby making  
13 sure that no individual gets --

14 MR. MARTIN: We have deleted all of that.

15 MRS. COMELLA: It is the period beyond ten  
16 thousand years, the EPA was silent on what our authority  
17 was.

18 CHAIRMAN HENDRIE: At the moment it is not clear  
19 whether we carry beyond ten thousand years or not.

20 MRS. COMELLA: That is correct.

21 COMMISSIONER GILINSKY: It makes for rather long  
22 Commissioner terms.

23 CHAIRMAN HENDRIE: We ought to say, shall serve  
24 five years or such time as may be required --

25 COMMISSIONER AHEARNE: -- to complete deliberation

1 on the rule.

2           CHAIRMAN HENDRIE: So we don't have a problem  
3 about the EPA thing. The business about whether or not our  
4 rule runs beyond the EPA thing is something we ought to hack  
5 a little bit at.

6           There is still some language in the supplementary  
7 information, I think, that runs that way, isn't there? It  
8 is just sort of ambiguous in a couple of places.

9           MR. MARTIN: I thought we had made conforming  
10 amendments to take all of that out. The idea was, if we  
11 have a problem with that, we will comment on the EPA rule.

12           MRS. COMELLA: Yes.

13           MR. MARTIN: That was the idea.

14           MRS. COMELLA: There is nothing that is in  
15 conflict with any draft of the EPA standards that we have  
16 seen there.

17           CHAIRMAN HENDRIE: Not conflict, but that there  
18 seems to be still in various places a look required, things  
19 required out after the EPA time. For instance, let's  
20 scratch heads and talk about it next time, because I am  
21 running late now, page 12, down at the bottom, it says, "The  
22 analyses," or "the analysis," depending on which version you  
23 like, "performed, can and will be largely quantitative  
24 during the period that greatest reliance can be placed upon  
25 the engineered system up to about ten thousand years after

1 closure. Thereafter, although the issues of concern, and  
2 certainly the physics of the repository itself do not  
3 change, the numerical uncertainties begin to become so large  
4 that the calculations become more indicative of expected  
5 repository behavior rather than definitive and actual  
6 performance. Hence, such calculations," which I take it to  
7 mean post ten thousand year calculations, "will be  
8 supplemented more heavily by qualitative, etc."

9 I am not sure -- I have not attempted to pick out  
10 all the places, but I noted --

11 MRS. COMELLA: We will make sure that we have gone  
12 through and identified certainly all those places where  
13 there is ambiguity.

14 COMMISSIONER AHEARNE: Where is the resolution  
15 going to come out? EPA ends at ten thousand years.

16 MRS. COMELLA: It is not clear from the draft of  
17 the EPA standard.

18 MR. BELL: Their draft in the Federal Register  
19 notice indicates that they think the repository after ten  
20 thousand years should continue to perform at about the same  
21 level of performance that it was performing for the first  
22 ten thousand years.

23 COMMISSIONER GILINSKY: They seem to be saying  
24 that if it meets the ten thousand year standard, it ought to  
25 function reasonably well after that for some undefined

1 period of time. The standard cut off at ten thousand years,  
2 but there is the implication that they don't think it will  
3 continue to work. We want to get that clarified in the  
4 review of the EPA standard.

5 MRS. COMELLA: If I am not mistaken, I thought  
6 that at one time, for instance, ELD had mentioned in some  
7 internal staff discussions that if that is not clarified,  
8 that point could be raised in one of our licensing hearings  
9 as to the period of hazard, and how long we had to deal with  
10 it. I could be mistaken, but that was certainly one of the  
11 impression that I gathered. If that is correct, it poses  
12 litigative risk when we get into licensing.

13 COMMISSIONER AHEARNE: It poses calculational risk  
14 if you are going to require an uncertainty into future  
15 calculations.

16 MRS. COMELLA: That is true, too.

17 COMMISSIONER BRADFORD: Is the EPA in curies or  
18 rems?

19 MR. MARTIN: Curies.

20 CHAIRMAN HENDRIE: I think that it is a point that  
21 we ought to straighten out. It will be helpful to our own  
22 boards and adjudicatory process if we could be clear in this  
23 rule as to what we intend, so that it is not left as a vague  
24 point to be argued about and decided by the adjudicatory  
25 process in due time.

1           I must say to you that I don't know what the  
2 Commission's decision on the matter is. I can tell you what  
3 I think it ought to be. I think the EPA group was wise in  
4 limiting the time, in which showings have to be made,  
5 calculations and so on, to ten thousand years. I think we  
6 ought to do the same with regard to performance objectives  
7 and doses, and all the rest of that.

8           What I think we would like to see is that at the  
9 ten thousand year point, the gradient is right. That is,  
10 calculations about releases, and so on, up to ten thousand  
11 years, and you then go ahead and squint into the misty  
12 future briefly, and are able to say, and I don't see  
13 anything very obvious out there to me that suggests that  
14 things are going to change radically soon after the ten  
15 thousand year period, that is, stuff leaking slowly, if at  
16 all, and that the gradient is unchanged as you go across  
17 that boundary.

18           It just seems to me that you are going to have to  
19 find a way to frame that proposition without requiring  
20 people to come in and present you very much in the way of  
21 sets of calculations that go on out to hundreds of thousands  
22 of years, or whatever the heck.

23           I guess one could make that kind of calculation on  
24 a very simplified basis, on the proposition that there are  
25 not any unanticipated changes in the geology on the ground,

1 or it continues to move the way it has always moved, the  
2 geochemistry is the same, and there aren't earthquakes, and  
3 so on.

4           Then, I guess, you could do a calculation, how  
5 much good it would do you, I don't know, because your  
6 ability to say indeed that nothing will change out there in  
7 the indefinite future gets less and less distinct.

8           All you can say is, it stayed about stable for a  
9 good long period up to the present, and we don't see any  
10 obvious reasons for it to change, and that is about as good  
11 as we are going to be able to do. I think that is the kind  
12 of conclusion you would like to make as you look into the  
13 future.

14           MRS. COMELLA: Yes.

15           CHAIRMAN HENDRIE: If you can find some way to  
16 scratch the rule out on that basis, I would be happy, and  
17 what my colleagues would feel, I can't tell.

18           COMMISSIONER GILINSKY: What is in the rule that  
19 points to that point of view?

20           CHAIRMAN HENDRIE: I am not sure that anything  
21 does.

22           MRS. COMELLA: I am not sure anything does  
23 either.

24           CHAIRMAN HENDRIE: Back before the last meeting or  
25 two, there was some extension beyond the EPA period, and

1 some suggestion that the DOE would have to make showings  
2 that everything was great out there.

3 MR. MARTIN: I thought that we had gotten those.  
4 We will look some more.

5 CHAIRMAN HENDRIE: We agreed back there, on  
6 further consideration the staff did, to pull back before  
7 required findings to the EPA period, and you took them out o  
8 the rule. I am not sure they are all out of the front end  
9 of it, and the thing that I cited was at the front end, and  
10 it may just have been an oversight.

11 MRS. COMELLA: It was an oversight, certainly.

12 COMMISSIONER BRADFORD: Were these the deletions  
13 where you took out the phrase "and will not in result in  
14 significant doses to any individual members of the public?"

15 MRS. COMELLA: Yes.

16 COMMISSIONER BRADFORD: How does that change the  
17 time period, as distinguished from calculating from curies  
18 to rems?

19 MR. MARTIN: I think that discussion was more,  
20 these are extra requirements over and above the EPA  
21 standard.

22 COMMISSIONER BRADFORD: Right, but it seems to me  
23 now that they were being put in the posture of also having  
24 to do with time period.

25 Incidentally, I am not sure I agree with those

1 changes anyway, but that aside I don't understand them to  
2 have had to change the calculational periods.

3           CHAIRMAN HENDRIE: The proposition was to accept  
4 the EPA's authority to establish the generally acceptable  
5 environmental standards, and to then say that once those  
6 were established, and the EPA for instance had calculated  
7 these isotopes over ten thousand years and meet that, not  
8 more than so much of each isotope, we were then going beyond  
9 that saying, well, we are going to go ahead and calculate  
10 doses out into the future sometime which would show they are  
11 not large, and so on.

12           COMMISSIONER BRADFORD: One of the changes had to  
13 do with actually using the doses as a regulatory basis. The  
14 other two, I thought, just required the calculation.

15           CHAIRMAN HENDRIE: There was also some dose  
16 calculating out there beyond the EPA time. What I suggested  
17 is, we ought to (a) respect the EPA's authority and (b) make  
18 use of their wisdom.

19           COMMISSIONER BRADFORD: Accepting that, Joe, what  
20 about dose calculations within the EPA time, where does  
21 anybody do that at this point, if the EPA standard is not  
22 set in doses?

23           CHAIRMAN HENDRIE: We still ask for a dose  
24 calculation?

25           MRS. COMELLA: That was eliminated.

1           COMMISSIONER BRADFORD: It is on pages 8 and 25,  
2 and that is part of the overall elimination of dose rates  
3 from the regulatory portion that you had pointed out  
4 before.

5           MR. MARTIN: We took it all out.

6           MRS. COMELLA: Page 25 dealt with the calculation  
7 as described in the SAR, and that was also deleted.

8           CHAIRMAN HENDRIE: Good. It came out a lot better  
9 than I thought.

10          COMMISSIONER BRADFORD: The proposal is better  
11 than you needed. As I understand it, it does mean that at  
12 this point nobody is calculating the dose to be expected  
13 from the releases, which seems to me to be something that  
14 one would want done.

15          COMMISSIONER GILINSKY: Which it is.

16          COMMISSIONER AHEARNE: You can calculate the dose  
17 to the hypothetical individual --

18          COMMISSIONER BRADFORD: Whatever calculation it  
19 was that the staff had in mind.

20          COMMISSIONER AHEARNE: If you recall, at the  
21 previous meeting that is what was discussed, and it was that  
22 calculation they had in mind.

23          COMMISSIONER BRADFORD: Yes.

24          COMMISSIONER AHEARNE: That is really the only  
25 dose that you can calculate. You can't really do a --

1           COMMISSIONER BRADFORD: Yes, you don't know  
2 actually who is going to be where in a hundred, never mind  
3 ten thousand years.

4           COMMISSIONER GILINSKY: Or which planet.

5           COMMISSIONER BRADFORD: But I would like to leave  
6 that calculation in as a required calculation to be made,  
7 even it is taken out on the page where it seemed to be a  
8 regulatory requirement.

9           COMMISSIONER AHEARNE: Peter, do you see it more  
10 than a translation of the curie isotopes, therefore the type  
11 of radiation and, therefore, using the biological effect  
12 factors, etc.?

13          COMMISSIONER BRADFORD: No.

14          COMMISSIONER AHEARNE: In your view, it is  
15 strictly a mechanistic calculation?

16          COMMISSIONER BRADFORD: Yes, as it is now, I  
17 guess, with reactor licensing.

18          COMMISSIONER AHEARNE: The significance then is to  
19 insure that rather than our doing the calculation, the DOE  
20 does the calculation.

21          COMMISSIONER BRADFORD: It just seems to me that  
22 it ought to be part of the process, yes.

23          COMMISSIONER AHEARNE: By making it part of the  
24 process, the significance of it would be what?

25          COMMISSIONER BRADFORD: The significance of it

1 would be that we would be stating what the maximum dose was  
2 as it could affect the hypothetically person as  
3 distinguished to simply stating it in curies. After all,  
4 the end result of this process should be one that focuses  
5 not just on a number of curies, but links that number of  
6 curies to a dose.

7           COMMISSIONER AHEARNE: But would you embed in the  
8 concept that it would then open to question whether the EPA  
9 standard was acceptable?

10           COMMISSIONER GILINSKY: Acceptable?

11           COMMISSIONER AHEARNE: Yes.

12           COMMISSIONER GILINSKY: Met or acceptable?

13           COMMISSIONER AHEARNE: No, acceptable, because  
14 meeting the EPA standard has nothing to do with the dose.  
15 The EPA standard has to do with the curie release. If we  
16 are going to do the calculation of the dose, I am trying to  
17 understand what is the significance of doing the  
18 calculation?

19           COMMISSIONER BRADFORD: If it turned out that it  
20 was a terribly high number, then I guess I would want to  
21 know that.

22           COMMISSIONER AHEARNE: But is the purpose of it to  
23 then raising to question the acceptability of the EPA  
24 standard?

25           COMMISSIONER BRADFORD: It could be. If it turned

1 out that we could not question the EPA standard in our  
2 proceeding, then we ought at least to let our Congressional  
3 committees know that we thought there was a problem.

4           COMMISSIONER AHEARNE: But you can do that  
5 immediately.

6           COMMISSIONER BRADFORD: By calculating the EPA  
7 standard.

8           COMMISSIONER AHEARNE: That is right. If it is  
9 strictly a mechanistic calculation, then given the EPA  
10 release numbers, you can do that calculation and conclude  
11 whether or not they are acceptable. If you conclude they  
12 are acceptable, I am not sure how they would fit the  
13 process.

14           COMMISSIONER BRADFORD: I guess that depends on  
15 whether the actual license as applied for would contemplate  
16 releasing right at the EPA standard, or to have the EPA  
17 standard --

18           COMMISSIONER AHEARNE: Sure, but the acceptability  
19 of the EPA numbers could be determined immediately.

20           COMMISSIONER BRADFORD: Yes.

21           COMMISSIONER AHEARNE: Because if one of the  
22 criteria is that they must be met, they could not exceeded  
23 anyway.

24           COMMISSIONER BRADFORD: Right.

25           COMMISSIONER AHEARNE: Therefore, you can do the

1 calculation immediately, now.

2 COMMISSIONER BRADFORD: That is right.

3 COMMISSIONER AHEARNE: Then, if they are  
4 unacceptable, then you point to it to raise it whatever  
5 place you feel that ought to be raised.

6 COMMISSIONER BRADFORD: Within the context of the  
7 EPA standard.

8 COMMISSIONER AHEARNE: But if they are acceptable,  
9 I am having difficulty understanding how you would fold into  
10 the process the results of that dose calculation.

11 COMMISSIONER BRADFORD: Well, I had not really  
12 thought it through, except that I would like to have it. It  
13 seems to me that it always clarifies a little bit to be  
14 thinking of it in terms of potential dose.

15 COMMISSIONER AHEARNE: I agree with you that it is  
16 a more readily understandable set of numbers, but what I  
17 would expect is relying on the staff to do that calculation  
18 as opposed to imbedding it as part of the process.

19 COMMISSIONER BRADFORD: You may be right.

20 CHAIRMAN HENDRIE: I just wouldn't do it in the  
21 context of review of the specific applications because as  
22 formulated you don't see this dose, in fact it probably  
23 occurs somewhere out between five and ten thousand years in  
24 the future. It just seems to me to be not a very useful  
25 proposition to say that we have calculated the dose to an

1 individual.

2           COMMISSIONER BRADFORD: EPA, however they state  
3 their standard, has got to have done it.

4           CHAIRMAN HENDRIE: Yes, but presumably they have  
5 done that calculation or range of calculations as a part of  
6 determining the curie release standard, and found that they  
7 believe them to be acceptable small, and so on. Having that  
8 determination made by EPA, I would not tinker with it.

9           I believe that is why that Federal Radiation  
10 Council authority was passed, so that they would do things  
11 like that, decide what release levels ought to be on the  
12 basis of appropriate calculations in proceedings and  
13 considerations, and that they publish. Then all the rest of  
14 us take guidance from them.

15           As John said, the staff can back calculate, and so  
16 on, in the context of commenting on the EPA proposal. That  
17 is something that could be done, but I just would not do it  
18 for specific applications.

19           COMMISSIONER BRADFORD: You would not require it  
20 of a specific applicant. I can't believe we would actually  
21 license a repository without knowing what we thought that  
22 number was in the licensing process.

23           COMMISSIONER AHEARNE: My concern was just trying  
24 to fit it into the process. I agree that it would  
25 definitely be a number that you would want to know.

1           CHAIRMAN HENDRIE: I am not sure where that leaves  
2 you, John.

3           COMMISSIONER AHEARNE: I just don't see a need for  
4 it to be imbedded in the rule as a requirement. I would  
5 want the staff, when they are providing the comments on the  
6 EPA numbers to do that calculation for us. I think that  
7 that is the place where we ought to join the issue early.

8           COMMISSIONER BRADFORD: I am prepared to leave it  
9 for now. I guess we will all be smarter about what the EPA  
10 standard is actually going to be by the time they publish  
11 the final rule, and if it is a real source for concern  
12 there, we can raise it again.

13          CHAIRMAN HENDRIE: By the way, any late word on  
14 progress?

15          COMMISSIONER AHEARNE: Whatever it may be, I am  
16 confident that Mr. Nicholas will still be here when that  
17 rule gets out, but the rest of us, it is much less  
18 optimistic.

19          MR. DIRCKS: I think their rule slipped a bit. It  
20 is due to be reviewed in July now for a possible  
21 publication.

22          CHAIRMAN HENDRIE: It is better than I thought it  
23 was.

24                 Okay, thank you very much.

25

1 (Whereupon, at 12:35 p.m., the Commission  
2 adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the  
COMMISSION MEETING

in the matter of: Public Meeting - Briefing on SECY-81-167 - 10 CFR 60,  
Disposal of High-Level Radioactive Wastes in Geologic Repositories: Technical  
Criteria Date of Proceeding: June 2, 1981

Docket Number: \_\_\_\_\_

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original transcript  
thereof for the file of the Commission.

Patricia A. Minson

Official Reporter (Typed)



Official Reporter (Signature)