UNITED STATES

NUCLEAR REGULATORY COMMISSION

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MEETING WITH THE ORGANIZATION OF AGREEMENT STATES (OAS)

AND THE CONFERENCE OF RADIATION CONTROL PROGRAM

DIRECTORS (CRCPD)

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THURSDAY,

JUNE 21, 2018

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ROCKVILLE, MARYLAND

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The Commission met in the Commissioners' Hearing Room at the Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, at 10:00 a.m., Kristine L. Svinicki, Chairman, presiding.

COMMISSION MEMBERS:

KRISTINE L. SVINICKI, Chairman

JEFF BARAN, Commissioner

STEPHEN G. BURNS, Commissioner

ANNIE CAPUTO, Commissioner

DAVID A. WRIGHT, Commissioner

ALSO PRESENT:

ANNETTE VIETTI-COOK, Secretary of the Commission

MARGARET DOANE, General Counsel

OAS & CRPD LEADERSHIP PRESENT:

DAVID ALLARD, Certified Health Physicist, Director, Bureau of Radiation Protection, Pennsylvania Department of Environmental Protection, CRCPD Past Chair

KAREN BECKLEY, Program Manager, Radiation Control Program, Nevada Division of Public and Behavioral Health, CRCPD Chair

MATTHEW McKINLEY, Administrator, Radiation Health Program, Kentucky Cabinet for health & Family Services, OAS Past Chair

JENNIFER OPILA, Program Manager, Hazardous Materials & Waste Management Division, Colorado Department of Public Health and Environment, OAS Chair-elect

JARED THOMPSON, Program Manager, Radioactive Materials Program, Arkansas Department of Health, CRCPD Past Chair

DAVID TUBERVILLE, Assistant Director, Office of Radiation Control, Alabama Department of Public Health, OAS Chair

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

(10:03 a.m.)

CHAIRMAN SVINICKI: Well, good morning, everyone, welcome, it's good to see everyone. This morning the Commission convenes in public session for a meeting that we conduct annually, or as close to it as we can get.

Given everyone's schedules this is our meeting with the Organization of Agreement States as well as the Conference of Radiation Control Program Directors.

Again, there is a very rich tapestry of engagement between the two organizations and the Nuclear Regulatory Commission at all levels and on a lot of areas of expertise.

There is the discussions that go on throughout the year, but this is our annual opportunity for the Commission to meet with the, it tends to be the chairs and the chairs-elect and other presenters who are deeply involved in the many important activities that we have ongoing between our agreement state partners, our non-agreement state partners, and the NRC staff.

So this will bring these issues before the Commission's attention, which I know is something I know I always look forward to. I know the Commission as a whole really values all the work that's going on in our engagement with each of you.

So the structure of today's meeting will be that we will have, again, a series of topical presentations from the good folks seated at the table here, and I will introduce you each in turn before you are recognized to give the presentation that you intend on the topic that you

have indicated you will speak on and then the Commission will have a round of questions and answers of Commissioners so that we have an opportunity to further explore those things.

Before we begin with that do any of my colleagues have any opening comments they would like to make?

(No audible response)

CHAIRMAN SVINICKI: Okay, I think we're all eager just to dive right in to the topics we have before us today. So, again, I will just recognize and I'll introduce each of you I guess in a very summary way, but I'll introduce each of you before you present.

And my understanding is that the preferred order is what I am going to go by here, but we would begin with Mr. David Tuberville who is the Assistant Director, Office of Radiation Control of the Alabama Department of Public Health, and he is the current Organization of Agreement States Chair, so I recognize you to please begin.

MR. TUBERVILLE: Good morning. My topic today is on the current General License Program. In 2005 the Organization of Agreement States submitted a petition for a rulemaking to NRC requesting that NRC amend its 10 CFR Part 31 to strengthen the regulations by requiring a specific license for higher activity devices available under a general license.

Although a final rule was submitted to the Commission in 2010 after some consideration the Commission chose not to approve publication of that final rule.

Recently in response to GAO Report 16-330 the Commission directed the staff to take specific actions to evaluate whether it

was necessary to revise the rules or processes governing source protection and accountability.

From that assessment a need was identified to re-evaluate the current general license program. This time the assessment was not based on security but was based on health and safety.

From that the General License Re-Evaluation Working Group was established earlier this year. The working group currently includes three agreement state representatives.

The purpose of the re-evaluation is to either, one, provide sufficient basis that changes to the provision of the GL program are needed to ensure the continued protection of public health and safety in the current environment, or, two, document that the existing GL program continues to ensure the protection of public health and safety.

I know the working group has done a mountain of work in a very short amount of time. It's my understanding that the working group evaluation will be documented in a notation paper to the Commission in the very near future.

They have reached out to the agreement states in the form of a very comprehensive survey and got responses back from 30 of the 37 agreement states. That is an indication that the agreement states are very interested in this program and have some strong opinions as it relates to the GL issues.

At last year's OAS meeting in Memphis the Monday morning session was devoted to a panel discussion on the General License Program with lively discussions there.

The OAS has encouraged that NRC is taking another look

at the GL program. OAS is of the opinion that changes are indeed needed for the current GL program and we hope that the working group will come to the same conclusion.

I would like to take a few minutes here today to discuss some points that OAS sees as issues in the current GL program and should be considered in its re-evaluation.

First, OAS believes that we should come to a consensus to restrict the activity of radioactive material in the general license devices to something below Category 3 activity.

Anything above that level should be specifically licensed. This was proposed in the original OAS petition for rulemaking back in 2005.

Second, OAS believes that manufacturers and distributors have an obligation to better inform the end user of their regulatory responsibilities as a general licensee.

As a past inspector my experience has found that there is a low awareness of the regulatory requirements by general licensees. The end user routinely has an inadequate knowledge of his or her responsibilities that pertains to the radiation safety for the GL devices and there is high personnel turnover in these industrial sectors causing a quick loss of institutional knowledge as it pertains to the use of these devices. This is an area that needs to be addressed, perhaps even in the form of a rulemaking.

Third, OAS believes that the age of the GL program is a problem in itself. Personally, I am uncertain as to when GLs came into existence but from the records that I have seen early to late 1960s documenting transfers into Alabama.

Generally in the past general license registration and the

inspection programs have been a low priority in the agreement states and in NRC regions.

Inspection Manual 2800 states "Routine inspections of general licensees are not normally performed." Old records and incomplete databases make it difficult for these states that may be trying to get a handle on that problem.

In Alabama in 2010 we recognized our GL program as a weakness and we made a concerted effort to locate all the general license devices in our state. This required an extensive review of our files and databases as well as conducting site visits.

At that time when we did start we had a database with over 600 facilities that had registered GL devices in the past. That database did not differentiate between active and inactive facilities.

From our review we have gotten that number down to around 190 active GL registrants. What our investigation found was that many of the facilities that were in the database had long gone out of business and were now vacant lots.

This was a very time consuming and labor intensive job requiring a lot of man hours that some agreement states can't afford to give up.

Fourth, and finally, OAS believes under the current GL program lost and/or found GL devices will continue to be a problem. AS companies age and some go out of business oversight of the GL devices is compromised.

GAO devices routinely end up as part of the scrap metal if a plant is dismantled or the device is sold and transferred to another facility

in violation of the current rules and accountability is lost or compromised.

Personally I don't have any national numbers, but in the last five years Alabama has had a total of 26 events involving gauges containing radioactive material.

Of those 26 events nine were actually GL devices, including three that were found in scrap metal loads, one that was lost and not found, and one that had the potential to be lost.

Nine GL incidents in a 5-year span may not sound like a lot, but recognizing Alabama is a small player when it comes to radioactive material use, and I, along with many others in the agreement state, believe that lost GL devices are under reported as a whole.

I do recognize that general license devices are inherently safe but one cannot guarantee such safety when control is lost. Personally, if I could, I would abolish the GL program, and specifically license or exempted devices based on any accepted criteria.

If you asked all the agreement state program directors I am sure you would come up with a multitude of answers and differing opinions on how to correct this problem, but the agreement states, who are your partners, have some good ideas that work for their programs. History has proven that.

So what I ask is that you don't handcuff the agreement states with a Compatibility B designation on any rule changes that might be considered.

These are just some of the points I wanted to bring to your attention today. OAS recognizes the working group will most likely have additional recommendations possibly in the form of revised inspection

procedures, databases, and or changes to the regulations, and we look forward to their findings and recommendations.

I commend them all on the work that they have done in such a short amount of time. But I do ask that when you consider each recommendation make sure to consider how it will affect the agreements states and their limited staffs before making any final decisions.

As I said earlier, the agreement states are very interested in this topic and I would encourage you to continue to get their input as you move forward. Thank you for your time.

CHAIRMAN SVINICKI: Thank you very much. Next we will hear from Ms. Jennifer Opila. Is that -- Yes, thank you -- who is the Program Manager for Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment and she is the OAS Chair-Elect. Please proceed.

MS. OPILA: Thank you very much for having me today. My topic is the National Materials Program. The National Materials Program represents the partnership between the agreement states and the NRC to ensure radiation safety through regulatory programs.

As you know in 2017 the NRC Office of the Inspector General conducted an audit of the NRC's implementation of the National Materials Program. OAS welcomed the OIG audit and appreciated the efforts that the OIG team took to gather input from the agreement states.

The OIG attended the 2017 OAS annual meeting and presented the scope and the objectives of their audit. Additionally, the OIG was available during the meeting to collect feedback from the agreement states on the National Materials Program.

After the OAS meeting the OIG reached out to officials from all 37 agreement states as well as officials from Wyoming and Vermont who are on their way to becoming agreement states.

Based on the feedback I received from agreement states the OIG report accurately describes the information that they received from the agreement states.

I would like to discuss the OIG findings and the OAS reactions to the findings. First, the OIG found that stakeholders do not have a consistent understanding of some of the National Materials Program's tenants, including membership, members' roles and responsibilities, and the activities covered under the program.

The OAS agrees with this finding. In particular, that having defined roles and responsibilities would be helpful in providing a more effective relationship between the agreement states and the NRC.

Second, the OIG found that the regional state agreement officers serve an important liaison role between the NRC and the agreement states. The OAS also agrees with this finding.

In November of 2017 the OAS Board sent a letter to NRC emphasizing the roles of the RSAOs. This letter expressed the agreement states partnerships with the RSAO and emphasized the value of having such a resource readily available, usually just a phone call or email away.

OAS also encouraged the NRC to continue the practice of including the RSAO as part of the IMPEP teams for the agreement state program reviews.

Third, the OIG found that there was inconsistency of addressing the National Materials Program at these annual Commission

briefings. The OAS agrees with this finding and commits to including the National Materials Program and its remarks at future OAS/CRCPD Commission briefings.

Fourth, the OIG found that frequent NRC management turnover can negatively impact the National Materials Program. The OIG found that in the approximate ten years between October 2007 and January 2018 there have been eight different managers who held the NMSS or MSST Division Director position.

These changes are still occurring. In the eight weeks in late 2018 to early 2018 -- I'm sorry. In late 2017 to early 2018 the manager of the Director of MSTR or MSST changed twice.

The OAS strongly agrees with this finding. As the OIG states, "Different managers have different beliefs and levels of understanding of how the National Materials Program should be implemented."

Additionally, the OIG was accurate when they stated that agreement states staff expressed frustration with having to constantly re-establish working relationships with new NRC managers.

A recent example of this is that Kevin Williams represented the NRC at the March 2018 OAS Board Meeting. At this meeting we work with NRC management to develop priorities for the NRC and the OAS and the National Materials Program.

When Kevin was at our meeting he expressed that he had only been in his role for a short time and was still learning. Shortly after this Kevin was rotated to the Executive Director's Office to support transformation.

It is unclear how the information exchanged between Kevin and the OAS Board will be implemented with Kevin no longer even working in NMSS. It is difficult for the OAS and the agreement states to develop partnerships with the NRC when the representatives from the NRC are frequently changing.

Finally, the OIG found that 45 percent of agreement states are not satisfied with the level of influence they have on the National Materials Program. The OIG states that many agreement states do not see their relationship as an equal partnership and they have a lack of influence relative to the prioritization of changes in policy and rulemaking.

The OAS Board has heard similar concerns from the agreement states and has been working with the NRC to enhance the level of partnership between the agreement states and the NRC.

We believe that progress has been made in this area. In the past few years the NRC has worked with the OAS director of rulemaking to adjust the timing of request for comments in a manner that does not overwhelm agreement states staff.

And recently the NRC chose to add an OAS board member to the Common Prioritization of Rulemaking Working Group. We believe these two efforts by the NRC are valuable steps forward in partnering with the agreement states.

The OIG had two recommendations in their audit report. The OIG recommended that the Executive Director formalize the National Materials Program framework in a document to include a definition, vision, missions, goals and objectives, membership, members' roles and responsibilities, and activities.

The OIG also recommended that the Executive Director designate an NRC individual to serve as the National Materials Program champion and to encourage the agreement states to create a co-champion.

The OAS agrees with these recommendations and appreciates the NRC's response to the recommendations.

The OAS has dedicated a session of our 2018 annual meeting in August to discuss the OIG's recommendations and to work with the NRC on developing a framework document for the National Materials Program as well as selecting a champion and co-champion for the National Materials Program.

The OAS remains committed to enhancing our partnership with the NRC and implementing the National Materials Program. Thank you very much for having me.

CHAIRMAN SVINICKI: Thank you for your presentation. Next we will hear from Mr. Matthew McKinley who is the Administrator of the Radiation Health Program for the Kentucky Cabinet for Health and Family Services, and he is the recent past Chair of OAS. Mr. McKinley, please proceed.

MR. MCKINLEY: Thank you. My topic today is the IMPEP, which is the Integrated Materials Performance Evaluation Plan, process and implementation.

So I wanted to start, actually I have two slides basically, I just wanted to start with a little bit of background so that we can all be talking about the same thing as I move into my second slide.

IMPEP has been around since 1996, really 1994, it was a pilot. It was fully implemented in '96. I myself have been around for about

two-thirds of that time. I started in 2003.

I have been through four IMPEPs in a leadership position within Kentucky. I have served on two IMPEP teams and been a member of various MRBs representing the agreement states, so I have seen the program for a while from a number of different perspectives.

I look around the room and I see people who were here when it first began and were actually responsible for its implementation and overall the program is a fantastic program, one of the best of its kind that I have ever had the pleasure to work within.

However, it's not without its potential shortcomings, and since this is kind of the nature of this discussion I want to bring up a few issues for discussion, and in keeping with the IMPEP process I will call them recommendations for consideration.

So the way the IMPEP works is first of all it is authorized, it's justified directly back to the Atomic Energy Act, Section 274, Part J, that says the Commission on its own initiative after reasonable notice and opportunity for hearing to the state which an agreement under Subsection B as become effective, or upon request of the governor of such state, may terminate or suspend all or part of its agreement with the state and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that termination or suspension is required to protect public health and safety or the state has not complied with one or more of the requirements of this section.

So, obviously, the NRC has responsibility under this Act to make sure that states who have signed an agreement are continuing to be compatible and adequate to protect public health and safety.

To that end, the Commission shall periodically review such agreements and actions taken by the state under the agreement to ensure compliance with the provisions of this section.

So clearly it's an NRC responsibility to look at programs periodically to re-evaluate, make sure that everything is still going along smoothly. So that's the basis of the program.

The way it is implemented is it is broken into performance indicators. Many of you who have been around are quite familiar with those. Some may not be as familiar so I am just going to read what they are. It's a very short list, really.

There are common performance indicators, which as the name would imply, apply to all programs, including NRC regions that undergo the IMPEP process, and they are technical staffing and training, status of materials inspection program, technical quality of inspections, technical quality of licensing actions, and technical quality of incident and allegation activities.

And then there are a number of non-common performance indicators which may or may not apply to an individual program, and they include compatibility, of course, they don't apply to the regions because the regions are under the CFRs automatically, but for most states compatibility is a big issue.

Sealed source and device evaluation program, low-level waste, and uranium recovery round out the non-common performance indicators.

So the process for the IMPEP is that the team assembles, and it's made up of an NRC team leader and various NRC staff round out

the team along with agreement state participation.

So on each IMPEP team you'll have some NRC staff and some agreement state staff, which is a good collaboration. It brings a lot of different perspectives to each program.

The team will engage with the state before the IMPEP in a couple of different ways. One is that they will actually send an advanced person to the state to accompany state inspectors on inspections so they can assess the technical quality of inspections. The only way to really do that is to actually accompany inspectors in the field.

Another way is through the use of the IMPEP questionnaire. So the state sends a lot of advance information to the IMPEP team so that the IMPEP team is prepared to look at documents and can go in with a good plan to be efficient through the process.

That all happens before. The IMPEP generally takes about a week in which the team reviews all aspects of the program, looking at all of these performance indicators that apply.

After that process the team will leave the state, write up a draft report, send it to the state for comments, the state sends comments back, and a final report is due out at 104 days post IMPEP.

At that point an MRB is scheduled and the findings become official after the Management Review Board, MRB, has convened, and heard the findings. So the end result of an IMPEP is hopefully that the state is found to be adequate to protect public health and safety or they could be found adequate but needs improvement, or in some cases I suppose it's possible to be not adequate to protect public health and safety that would be a bad situation.

The other portion that is considered is the compatibility requirement and that would be either you are compatible or you're not compatible, and I'm going to talk a little bit more about the compatibility issue as we go along.

I have a second slide if we could go ahead and -- I don't know if anybody is really looking at the slides, but just in case they are.

FEMALE PARTICIPANT: Next slide?

MR. MCKINLEY: Next slide, please.

FEMALE PARTICIPANT: Okay.

MR. MCKINLEY: Yes, thank you. So implementation, there is a few issues that come up during consideration of how the IMPEP process is actually implemented, and one of those is compatibility and I did want to start to talk about that just a little bit.

Compatibility is very difficult to define and I have some notes here and I should probably read them. I think I have some time here so let me just grab my notes on this if I can find them. There we go.

The Kentucky agreement says that one of the things the state will do as a part of the agreement is that it will use its best efforts to maintain continuing compatibility between its program and the program of the Commission for the regulation of like materials.

Similar language is used in the Atomic Energy Act. It is very difficult to define what compatibility really truly means, but clearly the intent is that we all maintain a program that is similar to all of the other programs in the National Materials Program so that licensees could move from one state to the next and the rules under which they are governed would not change significantly.

The states do have some latitude, as has been mentioned earlier, in compatibility categories. In some cases the states can't have slightly different rules and the states can always be more restrictive than the NRC if they deem it to be appropriate.

Another area that bears mentioning is metrics, and I have that up here on my slide. I wanted to include it. It's a little bit hard to understand what it means by just reading that one word, but much of the IMPEP process is objective, and it's that way on purpose, and it has to be that way.

However, when metrics are used there must be an understanding that there is always a story behind the numbers. The numbers don't lie, but numbers can mean different things depending on the way in which those numbers were derived.

There have been instances where, and I am going to use my own state as an example, I don't want to pull other states, you know, into this, I haven't checked with them so I'm not going to, but I want to talk about something that happened in Kentucky years ago and that was we had fallen behind on our inspection performance, we had done some late inspections.

The metric is very clear and we did not meet the metric in that IMPEP review, but had we wanted to we could have manipulated that and simply not done inspections and just kept up with the ones that weren't overdue and potentially driven that number down into an area where we would have appeared to be more compliant when in fact we would have actually been worse for public health and safety.

So there are considerations that need to be taken into account by the IMPEP team and the Management Review Board when

dealing with metrics. They are good measures but there is always another aspect to the metrics.

The last part under implementation that I wanted to talk about was general licensing. David has given us a great presentation on GLs and their position within the National Materials Program.

If general licenses, or general license material more specifically, needs to be licensed perhaps it's time to consider whether or not it shouldn't be added to Inspection Manual 2800 and included on IMPEP reviews, at least in some capacity.

If not, then perhaps as David suggested we consider doing away with the program and folding in all of those licensees or those that need to be folded in under a specific license because right now there is a pretty vast number of licensees out there that is really not part of the evaluation process.

So speaking of process, the last couple of items that I wanted to address regarding IMPEP involve state representation. Now state representation is actually fairly good in a lot of ways.

The states participate as part of the IMPEP teams, which is good, and that there is also a spot on the Management Review Board for an agreement state representative.

However, that representative is non-voting member of the Management Review Board, and so that might be something to consider if more involvement, more direct involvement, could be had on the part of the states that might be another recommendation that could be considered.

Regarding the Management Review Board, Jennifer alluded to it, well she didn't allude to it, she came right out and said it, which

we all appreciate, the change in management is an issue and this is apparent in a lot of different areas but particularly in the IMPEP where the Management Review Board's are different people from year to year, and maybe even in some cases from month to month.

There is enough subjectivity within the program, as I have mentioned the metrics are great, they are objective, but there is a lot of other issues that surround the numbers that need to be taken into account and that's the Management Review Board's job, one of them anyway, and with different people come different interpretations, different points of view on these subjective findings which can lead to inconsistency of recommendations or agreeing with the team's findings in various areas from one state to the next.

And so part of the process I think to address some of the National Materials Program issues is to really define what the National Materials Program is, the roles and responsibilities of each participant, and this would be very helpful in the IMPEP process to have a very specific set of guidelines and means to provide clear understanding to each member of the Management Review Board as they rotate into those positions as to the nature of the relationship between the states and NRC and the flexibility that needs to be brought into the process when either agreeing with or changing a finding of the IMPEP team.

So one of the strengths of the IMPEP process, one of its main strengths, is its flexibility, its ability to evolve and adapt and, of course, that's only of value when we consider ways in which we might cause that evolution or adaptation to take place.

And so that's really the nature of my presentation here

today is to simply bring some issues up that may be considered to help adapt and improve the IMPEP process as a whole. Thank you.

CHAIRMAN SVINICKI: Thank you very much for that presentation. We will now pivot to our presenters who are speaking regarding issues and representing the CRCPD. We will begin with Ms. Karen Beckley who is the Program Manager of the Radiation Control Program in the Nevada Division of Public and Behavioral Health and Ms. Beckley is also the current CRCPD Chair. Please proceed.

MS. BECKLEY: Thank you and good morning. I have a few changes to this and I apologize. I have recently been promoted, so my position is now vacant, I am going to do both.

CHAIRMAN SVINICKI: Okay, thank you. Thank you. I mean, please, we prepare these sometime in advance, if there is some correction that is needed please just let us know.

MS. BECKLEY: Right, right, I apologize. So my hat for the state currently is Bureau Chief overseeing the regulatory programs, including the Radiation Control Program.

I am also the state liaison and that is my limited role for the state, and the reason I say that is because the topic I am prepared to talk about today is the decommissioning of nuclear reactors.

So as we go forward with this the issue I am going to present, as I said, is the decommissioning of nuclear reactors, and as you may know many states are facing a shutdown of reactors in their states.

The potential economic impact will be significant in these areas as well as the concern for the potential environmental impacts and the site security issues.

There will be significant public input to any perceived reduction of site security monitoring as we go forward. The Radiation Control Programs will have a greater involvement in oversight of these areas when the NRC terminates licensing and they will have reduced funding to do this because the power plant will not be currently operating.

In March 2016 the CRCPD provided 29 pages of comment to the NRC Docket Number NRC-2015-0070 expressing many of these concerns. We continue to work collaboratively with the NRC to address these issues but are becoming increasingly concerned with the imminent closure of these sites and with rulemaking still not finalized as it's an ongoing process.

As we know that there is -- Some of the casks will be moved and put into new sites and we're not quite sure where all of the rulemaking is going to go.

So as we have to deal with our administration it would be very helpful for us to know what the perception of the NRC is going forward and when we could expect the rulemaking process to go.

I know that there was a lot of NUREGs that were being finalized in this process but then it seemed to stall somewhere along the line. So I am just bringing this forward as a concern as we move into closure of these reactor sites. Thank you for your time today.

CHAIRMAN SVINICKI: Thank you very much. Next we will hear from Mr. David Allard who is a Certified Health Physicist in addition to being Director of the Bureau of Radiation Protection in the Pennsylvania Department of Environmental Protection.

He is the recent CRCPD past Chair and a frequent

presenter at these meetings. Welcome back and thank you for being here again. Please proceed.

MR. ALLARD: Thank you, Madam Chair. Commissioners, it is always a pleasure and an honor to be here to brief the Commission. First slide, please. I do have some slides as always. I usually talk from my slides. So, thank you.

So one bit of good news here for the CRCPD we have a birthday party going on, a year-long birthday party. We just celebrated, we were fortunate to have Commissioner Baran down in South Carolina, we had our annual meeting in May.

We are celebrating our 50th year here, a half century of radiation protection. Despite the turbulent years of 1968, we had some very forward-looking RAD control program directors back there that had some financial support from the FDA and formed this organization, this great organization. Next slide.

It's a little busy slide. CRCPD is a partnership dedicated to radiation protection, and when we say "partnership" we mean partnership. I don't think -- And I am involved with a lot of these organizations.

We touch and interact with many federal agencies here in the country and professional organizations and we have a lot of our efforts are towards liaison with these organizations, getting their input for our suggested state regulations, having meetings, radiation protection standards, and so we really have dozens and dozens of working groups and task forces and such that work all these various issues. Next slide, please.

This is a slide I cobbled together, which I -- The states really are the sort of the main spring of radiation protection in this country. If

there accidents, incidents, we're the ones on the ground that are going to be responding to these events.

Thirty-seven of our partner states are agreement states, but still if there is emergencies, transportation, whatever the event, we're going to be responding.

So it really is where the rubber meets the ground with the programs, whether it's a power plant so that we may not, we don't need a license, or transportation through our states, so we are involved with that. So we touch a lot of different areas. Next slide, please.

The organization itself we've got a wonderful Executive, Ruth McBurney, who was a chair of the CRCPD and has been our Executive for over ten years now.

I have been blessed to be involved with the Board as a member at large and here as Chair-Elect and Chair and past Chair for the past few years. All of these individuals on the Board and the officers have oversight with these various task forces and working groups and groups that are working, again, dozens of model state regulations.

We have literally hundreds of people, members of the CRCPD, working these various work groups and it really is our membership, too, that's doing all this work.

There is literally, and Jared is also reminding me of this, literally thousands and thousands of hours of effort, volunteer effort, into this organization and the dedication is really to be commended. Next slide, please.

So into sort of the meat of my thesis here, this presentation, I am old enough to be here to, having worked under ICRP 2,

now 2630, ICRP 60 is out there now and ICRP 103.

You know, our radiation protection systems evolved over the years in the teens, '20s, '30s, '40s, '50s when we were working through scenarios, you know, of tolerance, you know, how much radiation exposure can a human tolerate.

As we have learned from following the Hiroshima and Nagasaki survivors we know there is risk associated with radiation exposure. So we have evolved into the '70s more of a probabilistic, as the NRC does with licensing the power plants, a probabilistic view of cancer induction.

We always want to limit any sort of deterministic cue radiation effects. But we have scenarios now where we want to justify the radiation exposure.

We have lots of sources of radiation in medicine with the x-rays, radiation sources, they are well utilized in medicine and industry for the benefit of man, and we want to justify that use so we also want to optimize use, we want to make sure exposures are the lowest reasonably treatable, and we want to have that limitation system.

We want to have some limits where we don't want the public or the workers to exceed those limits. And we have existing conditions, plant scenarios, plant scenarios licensing where we license radioactive material, and we have also emergencies.

So this is sort of the radiation protection framework that we have evolved into. Next slide, please.

On the national level we have the National Council on Radiation Protection of Measurement. This is one of my favorite slides. Laurie Taylor was involved with ICRP and NCRP for many years, sort of the

father of health physics here in the states, and I love this quote that I found a few years ago, "Radiation protection is not only a matter of science it's a problem of philosophy, morality, and utmost wisdom," and I think us as regulators this is what we deal with really every day.

And I think we looked to the NCRP, which is a congressionally-chartered organization back in '64, they've been around since 1928 with the ICRP, but we look to the NCRP for our guidance. Next slide, please.

So in the '60s we had the Federal Radiation Council and with the formation of the EPA that Federal Radiation Council went away and that was the group that advised the President, advised all the regulators on radiation protection standards.

That role is now with the Environmental Protection Agency and it's actually the EPA that sets sort of the guidance for the whole country and, of course, the NRC and your sister agency DOE and others, including the states have to follow suit.

So we look to the EPA and the federal government to sort of set the national standards for workers and the public. Next slide, please

However, we find ourselves in a scenario where sort of our metrics for protection are a little off. We've got the international radiation protection, ICRP standards that are out there, our NRC and agreement state standards are less restrictive as far as this is the external whole body dose limit for workers, and we've also got our colleagues over in OSHA that did not update their regulations back in the early '90s as many of the other federal regulators did.

Now the NRC was going down the path, and we applaud

the NRC looking at 10 CFR Part 20 but we've recently backed off of that. I would hope by -- I see this at some point in the future that as a country we will get to the point where we can get back to some uniform, rational approach in radiation protection standards.

For example, OSHA, if NRC or the states do not regulate a radiation source OSHA kicks in. So if we have an incident, and emergency, technically the OSHA regulations will apply, and there has been some recent NCRP reports that have reflected that and had conversations with OSHA.

They know there is a problem but they are just resource limited in being able to update their regs. So, again, I would hope, you know, all of us would be able to get together at some point and sort all this out. Next slide, please.

There are a couple specific things that are out there I want to point out. One I pointed out last year, the lens dose, the ICRP reviewed this an the NRCP just recently published Commentary 26 on this where they are coming to find out it's not a threshold-type of a response that it may be a stochastic, probabilistic response for cataract induction.

So the recommendation is to reduce the lens dose. This is not going to impact the NRC's power plant for the licensees that much, but in the states where we've got x-ray sources, fluoroscopy, for example, this could be a big deal for states in implementing and the users of this type of equipment.

So I think this is something that the NRC really wants to, should look at. The other big issue is the LNT, linear no-threshold model for radiation protection.

This has been out there as long as I have been in this field,

over 40 years. It's been as controversial for as long, if not longer. However, I would point out just within the last several weeks NCRP just has issued NCRP Commentary Number 27.

I would encourage you to get a copy and take a look at that. It's an excellent report. Dr. Roy Shore from Columbia led that and it was presented at the NCRP meeting this spring.

But you actually have a petition on your docket of this, several, a couple, I think. So this might be a good report to look at. They looked at 30 recent epidemiological studies and they conclude two-thirds of those supported the linear no-threshold.

So they looked at the statistics, the quality of the data and such, and they summarized this and there is a nice Table 1.1 there you can look at. So this is a good document to look at as far as resolving your petition. So, next slide, please. I'll do this to the beat of a drum.

CHAIRMAN SVINICKI: For the record I am not gaveling you down. We have dispatched someone to inquire about the pounder. I apologize for that.

MR. ALLARD: That's okay. I was just commenting when I took the second part of my Boards it was up in Boston and this actually had -- We were just talking about this out in the hall, and one of the instructors went out and took care of it, so -- Funny.

So just to kind of wrap up here, so I encourage and to utilize your interagency steering committee on radiation standards. So the NRC and the EPA co-chair ISCORS and it's all the federal partners and there is a couple state observers, myself and Earl Fordham from Washington.

So this group has actually pulled together Dr. Glenn, or Senator Glenn, when the issues with cleanup standards were out there. So this is a good group to come to to look at these kinds of issues and, of course, the NCRP. Next slide, please.

So just to kind of wrap up the second topic, the training, this is an easy one, quick, we are in a big way of hurt. We have talked about this. Us baby boomers are waving out. Sadly, the number of health physics degrees coming out of the bachelor's and graduate programs is in the decline.

ORISE does a great review of this. They just did a 50-year review. Next slide, please. And, closer, the actual number of enrollments is actually dropping, too.

This is very worrisome for us as a profession and as the states. I was talking about this as being a wave before, this has really turned into a tsunami.

We are seeing a huge number of staff retirements and new staff coming in that need to be trained. We don't have the formal programs out there. So I would encourage the NRC and other federal agencies to help support these graduate programs out there. Next slide, please.

So, again, the NCRP looked at this back in about, I think it was 2013 and in 2015 issued a nice commentary on this. Again, we are looking at 30, 40 percent retirements.

This is the NRC, all the states, the federal agencies, the utilities, everybody is looking at the same thing, so there is a great training need, staffing need. Next slide, please.

So I just want to thank the NRC for their continuous

support, even the non-agreement staff are able now to take the online fundamental radiation protection courses. The agreement state training is great, it's needed, it's comprehensive, it's effective. We've got to keep it going.

I would encourage the NRC staff to continue to move these courses, internal dosimetry just got moved over online, continue to get these online, and maybe even take some of the hands-on, like the industrial radiography course, maybe do the academics online and then maybe move, you know, the hands-on type training to say a regional area where the states -- That's tough.

It's really tough getting out-of-state travel in the states, and so maybe regional training have medical centers or industries host that. It's really appreciated.

One thing I also might -- We'll talk to NRC staff about this, with this tsunami of retirements it might be a good time to survey the states on their needs. You folks know your needs, even staff that may be moving around within NRC what sort of training you may need.

And maybe increase offerings. I know it's usually about September or October that that training list comes out, so maybe it would be a good time to survey the states and internally within NRC to see what sort of the needs are.

And then my last slide, and I'm right on time, here. Tell my wife. So I just got to pitch one -- We are organizing, the International Atomic Energy Agency, IAEA, asked the CRCP to host a meeting on NORM, we could call it TNORM here in the states, these are things that are sort of outside of NRC's purview for licensing, naturally occurring radioactive

material gets concentrated, oil and gas industries, the zircons and such, so we are going to be host.

It's the first time in North America in September of 2019 and we've got the hotel booked, we're about to publish a call for abstracts.

Yes, but there are some -- We have an NRC staffer on the committee pulling together the symposium and we are looking for non-financial support from the NRC on this just to sort of, in kind, but there are like mill tailings and mining tailings, over burden and that sort of thing that may be applicable, so if we can encourage NRC involvement with this.

It's going to be out in Denver in Jen's backyard in 2019 and we're real excited. It's going to be a good venue and be a very good meeting. So, thank you for your attention.

CHAIRMAN SVINICKI: Thank you very much. And providing the final presentation of this Panel will be Mr. Jared Thompson, who is the program manager of the radioactive materials program of the Arkansas Department of Health. And Mr. Thompson is also a CRCPD past chair. Please proceed.

MR. THOMPSON: Thank you, Madam Chairperson and Commissioners. I like to call myself the passed-out chair.

(Laughter)

MR. THOMPSON: I'm with you. And I want to say, I want to express my appreciation to Commissioner Baran for coming to our meeting and speaking. We almost begged him, so I really have to say thank you for coming and making the agenda a little bit easier to fill out.

I would like to express my gratitude and appreciation for the help I received from Keisha Cornelius from Oklahoma. She is the

chairperson of the Conference of Radiation Control Programs G-34 Committee on Industrial Radiography. She provided excellence guidance and information to help prepare these comments.

The CRCPD G-34 Committee on industrial radiography was specifically identified as the lead organization for the national materials program, Pilot Project 2 in 2003. This pilot project was one of five projects which was a collaborative effort of the NRC, CRCPD and the organization of agreement states, to further evaluate the national materials program.

The project was to initiate a national industrial radiography safety certification program. Including approval and administration of exams.

The objects of the project was to develop the process and criteria for review and requests by the states or organization seeking recognition as certifying entities and for reviewing program changes that occur once recognition has been given. This joint effort would contribute to the credibility of the certification program nation-wide.

David Turberville, current OAS chair, has been a member of this Committee and currently serves as an advisor. Currently there are nine states that have industrial radiography certification programs.

The American Society for Nondestructive Testing, is an independent certifying organization. ASNT received recognition as a certifying organization in 1998. This was accomplished by a formal review performed by a NRC working group.

The G-34 Committee initially formalized the draft criteria based on acceptable standards and drafted a process for conducting initial application reviews. As a follow-up to this project, at the request of NRC,

the G-34 Committee has been tasked to develop procedures to conduct initial and periodic reviews of existing radiography certification programs.

NRC would use the results of these reviews as part of their periodic review of a state program under the IMPEP process.

Draft criteria for the audit, of the radiography certification program, has been developed. And it has been tested in the State of Oklahoma.

Draft procedures are conducting the review have also been written. Including an audit of how the certifying program administers test.

Team findings of acceptable or unacceptable will be submitted to the CRCPD executive board for approval. NRC will be provided the final results.

If a certifying program is found unacceptable, what happens next? CRCPD can certainly terminate the contract with a state since we provide them the exams and remove the designation of a certifying state.

I want to emphasize this, CRCPD does not have, nor wants, any enforcement action authority.

Fingers won't cooperate. And I don't know what I was going to say.

CHAIRMAN SVINICKI: I think it's this humidity --

(Laughter)

MR. THOMPSON: There are some potential questions and issues related to findings established by G-34 Committee. First question is, what happens to all the individual certifications that were issued

during the review period in which a certifying organization performance was found unacceptable.

The second question, who handle any necessary enforcement action resulting from this type of review, and who determines when or if a state or organization can become a certifying organization again. And perhaps the biggest question out there is, will NRC accept CRCPD's findings.

And actually, it's the last page. While it is unlikely, we hope that a certifying organization will ever be found unacceptable, there is a need to discuss the possibility and develop procedures just in case it should occur.

The procedure is titled, procedures for initial and periodic review of certifying entities has not been approved by the CRCP board, CRCPD board, nor has it received NRC concurrence.

The G-34 Committee believes that the issues discussed today need resolution before going any further. The CRCPD remains supportive in the discussion of the national materials program.

And it is the desire of CRCPD to see the pilot program to completion. Thank you.

CHAIRMAN SVINICKI: Thank you very much, Mr. Thompson. And, again, my thanks to all of you who have covered a fast territory of information and in a very efficient amount of time. I'm certain that the Commission will have a lot of questions for our back and forth in our dialogue here.

As is our practice to rotate the order of recognition we begin today's question and answer period with Commissioner Burns.

Please proceed.

COMMISSIONER BURNS: Thank you, Chairman, and thank you all for being here and for your presentations. It's nice to see a number of you again.

Actually, I think the last time I saw Mr. Allard was up at Three Mile Island.

MR. ALLARD: It could have been.

COMMISSIONER BURNS: I think it was at Three Mile Island.

CHAIRMAN SVINICKI: You know, I met him at Three Mile Island, perhaps it is there.

COMMISSIONER BURNS: Peach Bottom.

(Laughter)

CHAIRMAN SVINICKI: Oh, there you go.

COMMISSIONER BURNS: But it's good to see you all. And, again, I think we all appreciate the work of the agreement states, it's an interesting partnership that has developed since 1962 and I think the State of Kentucky was, the Commonwealth of Kentucky, was the first state to enter into the program.

I think we've heard a lot of interesting things today. I want to mention as well, as I'm looking forward to attending the OAS annual meeting in Montgomery, Alabama later. And I think Commissioner Wright is going to try to join me there but I'm happy to speak at the conference and engage with those who are attending.

Let me go over a few questions, and maybe I'll start with you, Ms. Turberville. In terms of, you know, general licenses are, I think,

very interesting.

(Laughter)

COMMISSIONER BURNS: So, what, I think you highlighted some of the potential failings or gaps in terms of control. And it actually, in some respects, it reminds me.

I was sort of, well, in terms of some visits to Region I and talking about some of the efforts that the NRC, and also the states. Particularly in, I think, in New England and to the mid-west in terms of recovery of old radium sources, the old gauges.

I remember seeing a picture and it was like going into a flea market or something and seeing the old airplane gauges and things like that. And so, when you talk about the types of things in terms of recovering, it sort of reminded me, reminded me of that.

What do you think are, and actually, any of you can pipe in on this is, what are the potential approaches do you think, without trying to get too far ahead of the things, that might be alternatives to the general licensing?

And I ask that because, in the context we all know that there's a complexity in licensing. You know, a reactor license is an extraordinary complex undertaking.

If you have a fixed radiation facility, that's going to be, obviously more difficult. Is the, maybe is it the approach or the concerns are for things that are now generally licensed that it's really about, where the heck is that thing and how do we do it.

So, I'd be interested in maybe thoughts any of you have on where do we, we might go with this.

MR. TURBERVILLE: Well, based on my experience, as I say, I was an inspector for a long time, the general licensed devices that are out there, many of them, very similar devices we already specifically licensed.

COMMISSIONER BURNS: Yes.

MR. TURBERVILLE: So I, when I first started doing the inspections it was very confusing to me, as an inspector, as to how you made this decision that you could distribute something without it being a specific license. So, I think we need to look at consistency in that area. Specifically license them, put them on a routine inspection interval.

For Alabama, we don't get any fees associated with registration so any fees that we get are through our specific licensing that runs our program as well.

So that's where we come from, from our state. So it would put those in a five year inspection category, which we're doing now, for our general licensees. But that's dependent upon resources.

COMMISSIONER BURNS: Yes.

MR. TURBERVILLE: If we lose resources, we have to cut back on something and it will be the general license program.

COMMISSIONER BURNS: Yes.

MR. TURBERVILLE: And that's the way we work it.

COMMISSIONER BURNS: Anybody else? Any thoughts you want to share?

MS. OPILA: Well, I would just say, on the other end of the spectrum there are a lot of things that are generally licensed that really don't need to be regulated and that we could definitely go to an exemption.

And a tritium exit signs I think would be a definite good example of something that should be more exempt, in the exempt category, than generally licensed.

COMMISSIONER BURNS: Okay. All right, thanks.

A couple of themes or a couple of you touched on the theme, the question of consistency of, consistency of actions partly due to staff turnover. Mr. Allard, you mentioned 40 years, and it's my 40th year in this area, as well.

And the question of turnover and sort of passing the baton to a new generation, if you will, which I think has had, is some of the impact.

I think in some of the areas, as I reflect on in terms of NRC, and I think I heard it not only from you all but in other places, this potential for staff turnover, worrying about consistency. But then I sort of think back, I think of a phrase that John Adams used that were government of laws, not men.

So we need to make sure we've got a consistency of those types of things. And I think both Mr. McKinley, Ms. Opila and Mr. Turberville, I think all of you may have touched on some of this aspect of enhancing guidance, enhancing some ideas of the framework.

So one of my questions, and, Ms. Opila, I'll start with you. In reflecting on the IG study, or the IG audit report, it talked about potentially bringing greater definition. What are some of the things you think might help here as we begin to look at this more closely in terms of giving greater definition in terms of the materials program and how would that help the consistency?

MS. OPILA: Well, I think a lot of it is developing the

framework that was suggested by the audit. As particularly in defining the rules and responsibilities of the different players in the national materials program and in defining like what responsibilities we have through various types of processes.

Particularly with prioritization of rulemaking and rulemaking in general. I think that's where we could really improve on defining that framework.

COMMISSIONER BURNS: Okay.

MS. OPILA: I would, I think I'm going to respectfully disagree with you that the turnover that we're seeing in the management, which is reflected in the OIG report, it's not necessarily because of retirements, it really has been a lot of repositioning of managers in those programs whereas, Kevin Williams is a good example, he came from another part of NRC, was put into NMSS and then was repositioned six months later into this transformation project that's going on.

And we're seeing a lot of that where managers are coming in and then just getting re-purposed somewhere else in NRC. And like I mentioned, it's hard for us to develop those relationships at the higher level.

COMMISSIONER BURNS: Yes, and let me clarify. I understand why you may interpret my comment that way.

I agree with you. It's not solely retirement, it may have an impact because we need to be doing staff development here.

But the question is, and I think the question you raise I think is a good one, which is, where do you balance staff development with stability in the organization, stability in the program?

And that's not an easy nut to crack but that is, I think that is

the important question. And it's something I think we need to look at.

Mr. McKinley, I think, going off the same thing, I think you touched on it as well, this question that you have, you may have different members on the team, this may not have anything to do with because people are moving around, you just have, sometimes, different members on the management review boards.

Are there particular things you think we could enhance that would help that consistency, either processes, procedures, training members, things like that?

MR. MCKINLEY: Oh, absolutely. And I think that that's kind of the theme of the answer here is, as your John Adams quote indicated --

COMMISSIONER BURNS: Yes.

MR. MCKINLEY: -- it's about the process, it's about the responsibilities and the authorities of the people and then those people having an understanding of what their role is and the nature of the relationships that exist in the national materials program. And I think that would go a long way to helping the consistency.

There's no possibility of 100 percent consistency.

COMMISSIONER BURNS: Yes.

MR. MCKINLEY: I don't expect that. I don't think anybody would expect that.

I just, I would suggest that perhaps in cases where inconsistency did come up or perceived inconsistency, perhaps one thing that's been suggested is, at the end of the MRB, if the state was still in disagreement with the ultimate finding to have an opportunity for that state to

include its descent, or comments within the final IMPEP report as a potentially solution to at least mitigate what might be perceived as inconsistency.

Inconsistency is very difficult to define, but, so I couch that by saying perceived consistency.

COMMISSIONER BURNS: Yes. Yes. As you say, there may be enhancements of procedures or enhancements of approaches may help.

You're not going to do everything it's like, I think lots of people say, I never want to go in front of that judge versus the other one but we do the best we can. Thank you, Chairman.

CHAIRMAN SVINICKI: Thank you, Commissioner. We now recognize Commissioner Caputo. Please proceed.

COMMISSIONER CAPUTO: Thank you. Well, I'm new here, so when it comes to turnover and building new relationships, I'm going to have to beg your indulgence as we build a relationship and I learn more about the work of the CRCPD and the agreement states.

So, bear with me in my education here. I look forward to learning as much as I can from all of you today. And I'm sure in the years going forward.

So, as I'm learning about the legal side of this, I understand the legal requirement for agreement states to be compatible with NRC regulations. And that when we make changes, agreement states need to make changes as well to remain compatible.

And at this point, near as I can find, on average that's at least ten to 15 changes a year in terms of just rulemaking and guidance.

Are there other changes that we make that also impact your workload in addition to that?

Do you have any sense of the scope or the scale of that?

MR. MCKINLEY: I think I've been elected to answer that question.

(Laughter)

COMMISSIONER CAPUTO: Short straw.

MR. MCKINLEY: I think you hit on the various areas of rulemaking, everything from legislation to policy that can impact, recently, fairly recently, there was the security orders. Started off as interim compensatory measures and moved through the process and now it's Part 37.

And those things are certainly impactful to state programs requiring resources and effort. I think, and I can speak again for my state, I don't want to bring anybody else along into this conversation, but we have struggled mightily with compatibility in Kentucky.

And I can say that without attempting to sound like I'm making an excuse, our process is extremely cumbersome. And our parts don't necessarily match up with CFR parts.

So, often a change that's very simple, from a CFR standpoint, is much more complex in a state where there is not a good match. We may have to open three or four parts of our regulations.

And then once their open and in a long process, we can't go get them again and do anything until they come back final on the first change. So --

COMMISSIONER CAPUTO: So does that mean that

presents a situation where you could be in the process, I think incorporating one update when we put out another update that then has to be --

MR. MCKINLEY: That's exactly right.

COMMISSIONER CAPUTO: Okay.

MR. MCKINLEY: Yes. And the three years is fairly generous. And I think most states have a pretty good track record of meeting that. Some states struggle, and Kentucky is one of them.

And I will tell you we've recently, I hate to use the analogy of throwing our hands up in the air, but essentially we've said, look, we cannot keep up.

And so we are now attempting to adopt by reference, which is now allowed by our state. We were not ever able to do that before but now we are.

And that's our solution so that we never have to worry about compatibility again. But that's a process as well. So, that's where we are.

COMMISSIONER CAPUTO: And does that three year time frame, is that just for the state to implement the change or does that also, does that also include time for actually communicating the change to your licensees and making sure that they are implementing those changes --

MR. MCKINLEY: The three year --

COMMISSIONER CAPUTO: -- towards or is that yet another time increment?

MR. MCKINLEY: No. The three years is to implement, is to have our own capable legislation.

And through the rulemaking process within each state, that

would involve reaching out to the licensees and making sure they understand what the new rule is going to be so that they can be compliment when the rule becomes effective. So that all happens within that same three time frame, ideally.

COMMISSIONER CAPUTO: Does anyone else want to add to that?

MR. TURBERVILLE: What I would like to mention is, Matt mentioned the referencing of the rules as part of the rulemaking. That's somewhat of a disturb, I've heard other states were doing that and that's somewhat of a disturbing trend because it's kind of taking away from the states opinion as far as the way we run our program.

A prime example of, Jared talked about the national radiographer certification program. That was not developed by NRC, that was the State of Texas.

They had good ideas back then that we, that we recognized and it became the national policy. So, it's just one of the things.

And I just want to bring up, I know a lot of states are doing it because it is easier, because it does take less time to do it.

And hopefully as we move forward, as Jim talked about getting more agreement statement representation on the front of this rulemaking with the prioritization, that we feel, that I'll feel a little more comfortable about that, as long as we have some agreement statement input as we move forward.

COMMISSIONER CAPUTO: So, does incorporating by reference have the result of limiting a state's flexibility and creativity to have a more tailored solution?

MR. TURBERVILLE: Yes, it does. As I say, if it, depending upon the compatibility category, if it's a compatibility, see where we can be more stringent in a state. If we're referencing by rule we don't, we're just basically doing what the NRC has done for the 10 CFR.

COMMISSIONER CAPUTO: But the nature of being required to be compatible, doesn't really give you the ability to sort of triage and set priorities either, because it all has to be done.

MS. OPILA: Exactly. Exactly. And I think another reason why more states are going to adopting by reference is I believe that we're seeing, in the development of rules, more items that are being designated as compatibility A or B. A being you have to be exact and B being you have to pretty much almost be exact.

And then the further interpretation, when the rules are being reviewed by NRC, that there isn't really any flexibility in that compatibility B designation. And if the NRC isn't giving us flexibility when they designate new rules or new parts of rules, if they aren't giving us flexibility and compatibility, we might as well just do adopt by reference.

Which, again, I agree with David is a disturbing trend because it doesn't give us the creativity as you described.

COMMISSIONER CAPUTO: Okay. I understand we are considering changes to the IMPEP process, what recommendations would you folks have, do you think would make that process more workable for the states?

MR. MCKINLEY: Well, I guess since that was my topic I'll address that one too.

(Laughter)

CHAIRMAN SVINICKI: I think we all have McKinley.

(Laughter)

MR. MCKINLEY: Right.

(Laughter)

MR. MCKINLEY: And I'm speaking for me. It's very difficult to speak for a large group of people.

I think a couple of things that were discussed, mostly related to MRB consistency and perhaps having some recourse beyond the MRB's decision, whether that be, I know there's been discussion of some kind of an appeals process. That's very difficult to implement, as you can imagine.

And I don't think a lot of, there is some disagreement that that's the way to go. I think another idea that I mentioned earlier was the ability to put descent into the final report so that at least if a state doesn't fully agree with --

COMMISSIONER CAPUTO: To concerns --

MR. MCKINLEY: -- with the action, at least that descent is documented in that final report. And there may be other things.

I think my intent with this presentation was to start, or continue, the discussion that's already ongoing with that regard.

And some of the other things that I mentioned, looking at GLs, and I think that's sort of in conjunction with the whole GL issue. If they're important enough to regulate, maybe we should be looking at that in some capacity at least, or giving a state a work practice if they have a good GL program.

And, I mean, there's probably half a dozen things we could

talk about that, at least in my opinion, would improve the process. But I think those are the big ones.

MS. OPILA: So, we just had our IMPEP in April and one thing that the team did that I think really improved, was something they were flexible with us on that really helped and should be looked at more is the use of electronic records and review of electronic records.

So, we have, all of our records are electronic in Colorado and we were able to provide the team with, basically we gave them a list of our licensing actions ahead of time, our inspection actions, and we said, which ones would you like to look at. And we were able to pull those files electronically and put them on a disc before the team even arrived in Colorado.

And then they were able to review them electronically and in a very efficient fashion. And it ended up making our IMPEP a day shorter. The team finished a whole day quicker.

And I think we could transition that even into some of the IMPEP records review happening before they even come onsite.

So if I was on an IMPEP team, I would, again, identify the records I wanted to look at, get those records from the state ahead of time, review them in my office in Colorado. And then when I came onsite to the IMPEP review, all I would need to do is ask questions of the particular state staff on which record questions I had.

So that could really decrease the amount of resources that the NRC is spending by having people actually at the site facility, usually for a week, to do an IMPEP review. And I think that would be a lot more efficient.

And, we could scoop up web-based licensing in that as well. Which I could go on for days on that.

COMMISSIONER CAPUTO: Well, if I could ask just one follow-up to Mr. McKinley. So this concern about the need for an appeal's process, if a state gets a negative finding from the management review board, that's documented until the next IMPEP is complete, correct?

So that's a four year time span where this state is more or less labeled as efficient. What about, what would your thoughts be on the possibility that as soon as whatever problem it is that's been corrected and verified that it's been corrected, that the state was then given a clean bill of health?

I mean, is that, would that go some distance toward addressing the design for an appeal?

MR. MCKINLEY: Well, any kind of recognition would, it would depend on the context and how it was implemented. I think that sort of speaks to the relationship issue.

One of the things that we've talked about over the years is the difference between the NRC agreement state relationship and the NRC reactor licensee relationship. That's why there are recommendations on an IMPEP and not violations.

So, it's a little bit different relationship. That being said, the NRC maintains the responsibility based on the Atomic Energy Act, to make sure that those agreements are still being upheld.

So, in some respects it's an inspection, in other respects it's a collaborative review. And I think in most cases what we would prefer is more of that collaboration that co-regulator feel to the process.

Adding state representation, I think will go a long way to that in enhancing, beefing that up a little bit. And any kind of process that shortens the time of having that bad mark so to speak or being on monitoring or heightened oversight.

And that's something that we have been talking about just this morning actually, trying to come up with ways to shorten the time that a state spends on heightened oversight or monitoring.

COMMISSIONER CAPUTO: Well, I'm always sensitive, and I'm over my time, but I'm always sensitive to bad marks that continue to exist after the problem has been corrected. Because I don't think that presents an accurate transparent picture to the public. Of the state of situation. So thank you.

CHAIRMAN SVINICKI: Thank you, Commissioner. Commissioner Wright, please proceed.

COMMISSIONER WRIGHT: Thank you very much. And this has been very interesting. Your presentations were great, and I'm looking forward, I guess we meet this afternoon, I'm looking forward to that as well.

So Ms. Opila, I'm going to ask you a question. You talked about the OIG audit. Were there any concerns that the agreement states have that were not identified in the audit?

MS. OPILA: I can't think of any off the top of my head. I think that, like I said, the agreement states that, a lot of the agreement states reached out to me personally after they spoke with the OIG and said, you know, I just wanted to tell you this is what I told them.

And there were some comment themes in there. And my

interpretation was that those were accurately reflected in the report.

COMMISSIONER WRIGHT: Okay. Also, you know the Commission is looking at transformation and areas where we can transform within this agency. Do you see any areas where the NRC could transform the NMP while still maintaining its role and with the agreement states?

MS. OPILA: Well, I think that I touched on some of that, but I believe that really increasing the idea of a partnership with the agreement states as we are co-regulators, you know, not only the steps that are already being taken with the NRC with getting the agreement states involved further up in the process of rulemaking so that we get to have a say in which rules or guidance or policy are getting worked on in what order and what the priorities of those, I think that is very helpful.

COMMISSIONER WRIGHT: So just to get a little into the weeds on that, were there any licensing practices that maybe the states have that maybe the NRC should look at adopting. Do you have any recommendations on things like that?

MS. OPILA: On licensing processes in particular?

COMMISSIONER WRIGHT: Yes. I mean, yes.

MS. OPILA: I think the actual licensing process is actually pretty variable from between the states and the NRC and we like having that flexibility.

COMMISSIONER WRIGHT: Okay. Thank you very much.

MS. OPILA: Yes.

PARTICIPANT: David?

COMMISSIONER WRIGHT: Part of the David caucus.

You know it means beloved so if you ever get fussed at. So have the, I like to look at the positive side of things too. So I've heard some issues about the general license program. But tell me, in your opinion, what have the agreement states found to be successful regarding the GL program?

MR. TURBERVILLE: Well, I think there's certain states, and somebody may have to help me. I know Florida has a very strong GL program, and it takes time and resources. I think they have a process where they register every one of their -- Mississippi as well, and I think New York also has a very strong GL program.

We in Alabama, ours, we follow NRC's guidelines for registration but we do have one caveat that we do not allow portable devices to be used except in one location. That's because that's an accountability issue in that sense. Some states may not even allow portable devices to be generally licensed.

So there's certain things that states do that work for them. I'm sorry, I don't have any specifics other than that.

COMMISSIONER WRIGHT: So earlier, Commissioner Burns was asking about the inspections as well. So are there, and I'm new too so are there inspections done for specific licenses?

MR. TURBERVILLE: Absolutely. For this type of --

COMMISSIONER WRIGHT: How do they differ from the GL's inspections?

MR. TURBERVILLE: Well --

COMMISSIONER WRIGHT: And I guess go further than that. Are there any of the concerns that are noted in the GL inspections seen in this special licensing?

MR. TURBERVILLE: Well, let me just say for a specific licensee, they've got an established radiation safety program, training program. And they have a radiation safety officer, so it's more -- and it's still accountability is what it comes down to for those types of devices and making sure that they leak tested the devices in accordance with it.

And I say the inspection of it is set up on a criteria based on inspection manual 2800 five year inspection interval.

COMMISSIONER WRIGHT: Okay. Yes, sir?

MR. THOMPSON: I want to kind of follow up on that. The one thing that's really big with GLs separating from a specific license is that because of the security requirements on a specific license there may be some grey areas that affect the GL. Some of the GLs may require additional security which is not really addressed at this time.

COMMISSIONER WRIGHT: Okay. So I'm actually going to blend a question. Did you have another comment? So I guess I'm going to blend a question that I had for David and I'm going to open it up to all of you because this end of the table's addressed it pretty good and I think there might be more that they could add.

So it seems to me that there could be some alignment now along the GL program among the agreement states, and consensus maybe. Am I right on that? Does it seem to be true about some changes?

And I guess let me go a little bit further on that. So the participation in the IMPEP, okay, and you've got the management review board together. So would you look at, do you think the participation from the states needs to be increased, and if you do, I think they should have greater involvement.

Can you give me a little bit more detail about the changes? You know, you started referring to some of that just a few minutes ago. Can you go a little bit more with that? Tell me some more.

MR. MCKINLEY: Sure. So as the agreement state program has grown, Commissioner Burns pointed out that Kentucky was the first agreement state 50, what 6 years ago? So at that time, of course, it was the one agreement state. Now there's 37, soon to be 39 and maybe certainly more after that as trends would go out into the future.

So I think the sort of the kernel of the idea here is that as the agreement states become more and more responsible for larger percentages of the materials that are out there and have more inspectors doing more inspections, doing more license actions, there's a lot more timely and current knowledge on what's going on in the materials world.

And yet our place in the system of establishing regulations, setting priorities, being involved in policy decision making hasn't changed all that much. And I think that might be a place to start just sort of, you know, align agreement states in a more proactive way in terms of implementing, or creating and then implementing policy.

COMMISSIONER WRIGHT: Right.

MR. MCKINLEY: As a broad answer, but that's the general idea.

COMMISSIONER WRIGHT: You're starting to get there, yes. Yes, ma'am?

MS. OPILA: Just one quick thing. I think as co-regulators, perhaps we shouldn't have to petition the NRC for a change in rulemaking. You know, we should be able to be with the NRC in

determining what changes are being made to the rules and not be just another stakeholder that, you know, has to petition for a change.

Additionally, when we had the pleasure of meeting with Commissioner Ostendorff when he was on the Commission and he spoke, I spoke to him about the idea that when the Commission is looking at our comments on rules, perhaps we should get a little bit of deference instead of just being another stakeholder.

We should get a little bit of deference on our comments because as co-regulators and having the experience that Matt talks about, you know, maybe our comments should be looked at with a little more weight.

COMMISSIONER WRIGHT: Anybody else? And I got a minute and a half here. The module program, I wanted to ask you about that. Your training programs?

MR. ALLARD: Yes.

COMMISSIONER WRIGHT: David, are there any technical training areas for the radioactive material under the agreement that are not addressed by the NRC?

MR. ALLARD: I wouldn't say. I think it's quite a comprehensive program, and in fact it's been expanding. I think the NRC courses are great, they start with the sort of basic health physics and get into the fundamentals and advanced, and they have laboratory sessions down in Chattanooga.

I think the trend towards online training is very good. I think that's, we need to keep that going.

COMMISSIONER WRIGHT: So you get feedback,

obviously, right?

MR. ALLARD: Some of them are graded. Some are pass/fails, but I get all the grades. Yes, we all get all the grades.

COMMISSIONER WRIGHT: So how do you measure the effectiveness of the --

MR. ALLARD: Well, if it's a licensing person, the supervisor overseeing the licensing, material licensing. If they're out doing inspection, the supervisor, they have to do accompaniments and the quality and the --

(Simultaneous speaking.)

COMMISSIONER WRIGHT: Is there any kind of testing?

MR. ALLARD: Sorry?

COMMISSIONER WRIGHT: Is there any kind of testing at the end of the --

MR. ALLARD: Well, at least in Pennsylvania we have a qualification journal. So you know, they have to do all these courses and then the supervisor for oversight -- and then of course the NRC comes in then with the IMPEP and there will be accompaniments with the NRC.

COMMISSIONER WRIGHT: Great. And I guess my last thing. This picture, you're not in this picture, which I'm trying.

MR. ALLARD: Tom Geruskiy was one of my, he was the first chair of the CRCPD. And Ruth told the story at the meeting that apparently Tom didn't go to some meeting and he got appointed as chair of CRCPD. And then he got elected.

COMMISSIONER WRIGHT: Thank you.

CHAIRMAN SVINICKI: All right, well thank you all for

your presentations. Before I flog the general license and IMPEP topics, I'm sorry, I would try to resist but everyone has their own take on things. I did have a couple of quick questions.

Mr. Allard, I'm just, this is a matter of curiosity for me. I of course meet with the Health Physics Society routinely and I've seen some of the statistics on the declining enrollments and the awarding of degrees, and I know even the US Congress has taken measures to try to reinforce maybe having a vibrancy around that very essential professional skill set.

Do states have any equivalent opportunities? I know state budgets are tight, but are there state programs you're aware of that if students matriculate in a certain profession and go into state service they can get some maybe tuition forgiveness at state schools and stuff. Does that exist in the US at all?

MR. ALLARD: That's a great idea. I know that, in fact one of my attorneys is actually getting that on the environmental side.

CHAIRMAN SVINICKI: Okay.

MR. ALLARD: He did some --

(Simultaneous speaking.)

CHAIRMAN SVINICKI: Oh, yes, for law school tuition.

MR. ALLARD: Yes, yes.

CHAIRMAN SVINICKI: And we have NRC attorneys that benefit from something similar at the federal level.

MR. ALLARD: That is a great idea and a great construct. And we have in Pennsylvania just created a new position where we able to get recent grads with no experience out of Bloomsburg for example. They have a small bachelor's program up there. So now I'm getting Bloomsburg

students coming right into my program without any experience. But I like that idea.

CHAIRMAN SVINICKI: Just a thought and inquiry and where narrowly targeted it could perhaps help states carry out their regulatory function. So maybe a case could be made to legislators. Anyway, I'm not lobbying which I actually shouldn't be doing anyway.

MR. ALLARD: That's right.

CHAIRMAN SVINICKI: And then, Ms. Beckley, I did want to just touch on you talked about maybe some general questions about our ongoing decommissioning on the, I'm sorry, our ongoing rulemaking in the decommissioning area.

I think, and if I'm wrong I know a very helpful NRC staff person will approach you afterwards. I think we try to keep our public website updated about the status of where that stands. And I don't want to bury you on a big page on all our rulemakings, but I think we've got some highlight on that because it is a very high visibility rulemaking.

And then of course as a general matter, until that rulemaking is completed, we will continue to approach matters for the decommissioning sites under our current regulations which are not always a perfect fit for the process which is why we're undertaking the rulemaking itself.

But that could potentially be a source of information for you, so I just, I wanted to point that out. So on generally licensed devices, I do appreciate that the presenter made the comment, and I think I wrote this down exactly, GL devices are inherently safe.

And now you did go on to caveat that that's not if they're

misused or mishandled or other such things, but this is a little bit of the tension for state regulators and federal regulators.

In our case we have the Atomic Energy Act, and we have of course now both the Department of Energy and the Nuclear Regulatory Commission have some origins in that Atomic Energy Act.

But that Act, if we view it as expressing the will of the Congress which is the voice of the people in the US, has said that we need to enable the beneficial uses of nuclear material.

So the tension is always, you know, the safest thing is always the thing that you could take all the sources and take them out of commerce and use and everything else and lock them up in the Fort Knox of sources or dispose of them and then you wouldn't have any risk presented to that.

I know that when we deal with our colleagues at the Department of Energy, National Nuclear Security Administration, as they look at diminishing the overall threat profile in the country for the potential malevolent uses of sources by our adversaries or bad actors, their view would be the more and more of them we can get out of beneficial use, the better.

So this is the tension that gets created is that we have to provide for efficient processes to keep the American public safe, but at the same time we need to in some way have a system that permits the use of these materials.

And as we go back and forth on generally licensed devices, I think at heart that's some of what makes it such an interesting topic and so complicated for all of us.

And in the IMPEP, let me also, and this is perilous for me because I have very scholarly colleagues on either side of me that are attorneys and I am not one.

But if I once again mention the Atomic Energy Act when we sit back and reflect on the agreement state program and agreement states and what are the origins there, I used to favor the term relinquishment of regulatory responsibility because under the Act I view it that what the federal body, now the NRC, has done is relinquish a responsibility to an agreement state upon the signing of that agreement between the NRC chair on behalf of this Commission that sits here and the governor of the state.

So it's kind of like I think of it as a temporary custody, and we do have in the history of the program one state. And I won't name states either because Mr. McKinley's been so, he's been so diplomatic about that.

But there was one state that just decided that wasn't for them and they turned it back over to the NRC, so we now regulate the activities in that state. So what comes with that relinquishment is that the people on this side of the table are still responsible to the American public that once we relinquish that, the program that the agreement state puts in place and its execution are providing a protection of public health and safety.

So that's what the IMPEP to me is about, you know, at bottom. It's about the fact can I confidently state when I sit before a Congressional oversight committee or anyone else that if what we're talking about is an agreement state, you know, a regulatory system, I have to attest to the adequacy, the sufficiency, its implementation.

And so I have served on this commission long enough that

we had a state that entered into probation which beyond monitoring and heightened oversight is, you know, is very, very significant action.

And I can tell you while not an appeal process, there is communication that goes on directly between the chairman of the NRC and the governor of that state. They have verbal communication. They talk about what's happening.

So I think that if we view the agreement as with the governor on behalf of all elements of the state that have responsibility for the public health and safety mission that's implicated, I think at bottom when that's communicated that a state program is in distress, that is a communication that goes to the executive of that state.

So I appreciate, I know one of the OAS representatives said an appeals process would be very complicated to put in place. And so I think for the reasons I'm describing, I think it would be -- the example about getting behind on its inspections, I appreciated that very, very much because first of all, examples are always really helpful to me.

And you could have gamed the system and that was the admission and that was the terms used, and you could have made that metric be something that in an IMPEP review did not, you know, rise to that level.

What that gets to for me is are the IMPEP team members, and then the MRB that really looks at the results of the review, are they exercising a kind of an expert judgement and a reasonableness which I think, you know, a lot of things we get twisted around because maybe what we needed to do is not change the system and not change the metrics, but we needed to have a kind of a reasonable approach to, you know, does this

give, should we give credit for this, does this action by an agreement state kind of offset the severity of what might have occurred and should we take that into account.

And I'm wondering if there's opportunity space just around kind of flexibility for, you know, the MRB itself when they're looking at what were the results of the IMPEP. But you know, what should we think about them, how should we interpret the potential for problems that arose from the types of things we saw, is it a very temporary backlog?

State personnel staffing can often be very small. If one, you know, inspector was on maternity leave and one other had an abrupt retirement or something like that, could we be, I won't say a little more gracious but could we just be more reasonable about some of it.

And I'm wondering that rather than, you know, make changes that are elaborate and highly proceduralized and documented, maybe we just need to look at how we're going about assessing what we find when we, you know, go accompany inspectors in the field and do things like that.

I always like to start with the simplest opportunity for a solution first before I get into something that's more complicated. And I don't know if any of the OAS members would like to react to that.

I hope we're being reasonable and the states have people on those IMPEP reviews. You review each other, and I think we have state folks on the NRC region IMPEPs as well. Please, Mr. McKinley.

MR. MCKINLEY: I just wanted to say that I agree with everything you just said. Not the whole thing but the part about the flexibility. I think that was the point that I was getting at was that there is

flexibility and there has to be flexibility built into the system.

The metrics are totally objective but there's always a story behind the metrics, and that's where the flexibility comes in. And the NRC staff, the IMPEP team members whether they're NRC or state members, are directed to be flexible.

And then the MRB needs flexibility to evaluate the whole picture. Not just the metrics, not just the situation but look at it in a broader context and I think that's exactly right, and I think the ask is to continue to work toward ensuring that there's greater consistency with that flexibility.

As you said, you know, maybe you had a good reason for getting behind and the MRB needs to, you know, give you some credit for that and not just throw the book at you.

But if you're going to do that with one then, you know, two years later when the same situation arises with a different state and a different MRB, it would be good to at least acknowledge that there was a very similar situation two years ago and this is how we handled it, and if we're going to do it differently, this is why.

CHAIRMAN SVINICKI: Yes, and I agree with you that there needs to be because the composition of these groups is varying depending on the review. And I actually think that's one of the strengths because a lot of state officials then have an opportunity to serve on somebody else's IMPEP review.

But we need to have a replicability then and know that the kind of results from one MRB are going to be equivalent to another review that was done four years later.

And I think to Commissioner Caputo's point about maybe

looking at what is the harm, what is the potential harm caused by a deficiency, what are the corrective actions already underway, and what is the general timeframe within which the situation will be cured I think are reasonable factors for the MRB and others to be able to take into account as they look.

Indeed, a circumstance may exist, a metric may be imperiled or violated. But this holistic look at it I think is as she put it, a more accurate reflection of any potential jeopardy to public health and safety that exists over the period of time.

And I'm over my time, and I will now recognize Commissioner Baran.

COMMISSIONER BARAN: Thanks. Well, I want to thank you all for being here and for the work you do and the work of the states who wanted to stand at the table this morning. You really are our partner regulators and we can't succeed in our health and safety mission without you. So, thank you for what you're doing.

Jen, I really appreciated the point you were making about the states being interested in being involved earlier in the process on rulemaking, trying to figure out, you know, at the stage of initiating a rulemaking. It doesn't make sense, what kind of priorities should it have.

And so I want to ask you all about one of these today which is something we have pending before the Commission now which is a rulemaking plan related to financial assurance for the disposal of Cat 1 and Cat 2 byproduct material sealed sources.

And I would like to get your thoughts on that. Under NRC's current regulations, many Cat 1 and 2 sealed sources are not

required to provide financial assurance for decommissioning. That means no decommissioning funding plan, and no financial instrument in place to cover the eventual transportation and disposal costs.

And this is basically because the current regulatory threshold for the financial assurance requirements to kick in is very high. So for example, as you all know, one of the most commonly used radionuclides in large sealed sources is cesium-137. Twenty-seven curies of cesium-137 qualifies as a Cat 2 quantity which subjects the source to physical security requirements and source tracking requirements.

But a licensee is not required to meet financial assurance requirements unless it possesses 100,000 curies of cesium-137, 27 versus 100,000. Similarly 8.1 curies of cobalt-60 qualifies as a Cat 2 quantity, but financial assurance requirements don't kick in until licensee possesses 10,000 curies of cobalt-60.

When I look at that, that doesn't really make sense to me, but I want to hear from all of you about what you think about that. Is there a good rationale for such a high threshold for financial assurance requirements to kick in?

(Off microphone comments.)

PARTICIPANT: This is a big issue.

MR. THOMPSON: I'm attempting to tackle this. CRCPD has been working with the disuse source working group and trying to put together the new suggestive state regulations Part S which is financial assurance regulations.

The primary goal of those regulations is to increase the amount of the decommissioning funding plan and the amount of money that

they would have to put up for possessing the current activity levels.

I don't know that they're, I'm not for sure that they're going to change the activity levels. And I believe that this is correct, that this particular set of rulemaking, or suggested rulemaking, is before the board for consideration now, and it's possible that this could be put out to the states a year or less depending upon how many comments and things, just like everybody else.

COMMISSIONER BARAN: This is what we were talking about, compatibility, earlier.

MR. THOMPSON: Right.

COMMISSIONER BARAN: This is compatibility C, so the states could go --

MR. THOMPSON: Could go more, yes.

COMMISSIONER BARAN: -- and have something stronger than what NRC has.

MR. THOMPSON: Yes, but we will at least match. We're looking for an increase over what NRC proposes in their current regulations.

COMMISSIONER BARAN: Okay.

MR. THOMPSON: That's what the change is primarily about. It has really nothing to do with the activity per se.

MR. ALLARD: So, yes, I think I'm on. So the SSR Part S is out there. I think it was floated last fall. There were some comments. I don't think it was out for a formal review, but SSR Part S is, we expect, I think shortly in front of the board for review and voting. And that would be a model state. These are our model state regulations.

I will say because of the Compatibility C, there are states

that are out there that have more restrictive, I think Texas, Illinois. We're looking very hard at it in Pennsylvania.

We've got some poster child cases of abandoned sources even before we became an agreement state up in Quehanna, licensee abandoned 100,000 curie cobalt-60 pool radiator and it was, like, $70,000 and it cost, I think, EPA, like, a couple million to pick it up and dispose of it.

There's all sorts of examples out there, a 400 curie cesium source, a couple hundred thousand dollars just to transfer it down for storage ta Southwest Research.

COMMISSIONER BARAN: So we're seeing, this isn't a theoretical issues, we're seeing real examples where --

MR. ALLARD: Oh yes, yes.

COMMISSIONER BARAN: -- because there isn't a financial instrument that would provide for decommissioning and there isn't a decommissioning plan, we're seeing cases where you have abandoned sources, sources just stored indefinitely because there's no money to do anything with them. Is that something that's happening outside of Pennsylvania? There are other cases of that in other states that folks are seeing?

MS. OPILA: So I serve on the low level waste forum disuse sources working group. And I think that this is a very interesting topic. And yes, there are these huge examples, as Dave has said.

But there are also a lot of regulatory programs out there that are making sure that these sources are being secured and safely stored. And so I'm not sure first how you define what a disuse source is. I don't know.

And then I think it could be a slippery slope to end up forcing licensees, you know, as the Chairman talked about, like, our jobs are to foster the use of radioactive materials and are you going to force universities to get rid of their materials when they are storing them safely and securely. And so --

COMMISSIONER BARAN: Well, that's not what's being proposed in the rulemaking plan --

(Simultaneous speaking.)

MS. OPILA: Right, right. I'm sorry. I digress. Yes, financial assurance for Category 1 and 2, the OAS is supportive of that. But I think one thing you're going to have to think about, the Commission is going to have to think about is in order to accomplish what is being proposed or contemplated, you might have to take away that compatibility C designation.

And we would not be in support of that. We would like to see the states be able to retain flexibility in this area.

COMMISSIONER BARAN: Why would you see it as a potential change in compatibility?

MS. OPILA: I think the thinking behind those that are very passionate about this issue is that we do, we need to have a more consistent framework on financial assurance for Cat 1 and 2 sources. And in order to do that, you would have to change the compatibility.

COMMISSIONER BARAN: Okay. And among the states that OAS has their position that it sounds like they think it makes sense to proceed with a rule to extend financial assurance requirements to Cat 1, Cat 2 byproduct material sealed sources that are tracked in NSTS.

Is that pretty much a widely shared view among the states? Is that controversial among the states or is there widespread agreement that that would be something that makes sense?

MR. THOMPSON: Well, I think it's fairly well shared that most every state that I'm aware of is interested in increasing that amount, increasing the financial amount.

COMMISSIONER BARAN: Yes, okay. And have there been discussions, have you all looked at, you know, what about Cat 3 sealed sources? Is that something that we should be looking at?

MR. THOMPSON: That makes people cringe.

COMMISSIONER BARAN: That makes people cringe. So talk a little bit about that. There's less agreement on that aspect. Or maybe no agreement.

MR. THOMPSON: There's less agreement on that, but there's also very much concern that when you start trying to capture all the Cat 3s, just how much of an economic or resource impact it has on the state --

COMMISSIONER BARAN: I see.

MR. THOMPSON: -- trying to verify do they have a decommissioning funding plan. Are they properly, have the right financial instrument to maintain an adequate program of that type? That's the real concern is, you know, I don't know that anybody's really demonstrated to us that there's a need for the Cat 3 to be included in those with the Cat 1s and Cat 2s necessarily.

COMMISSIONER BARAN: Okay.

MR. ALLARD: I might add that it's often that we have

these gauges are abandoned. You know, if the business goes out with these road, industrial nuclear gauges. But they're usually at the level of source and usefulness that often you can get them transferred to somebody else for use so the cost of disposal isn't there.

So I don't think we've seen as much of a problem with the Cat 3s, though I think, again, before we became an agreement state we did have a case out in Pittsburgh where somebody had aggregated a bunch of GL gauges and such. But I think that was an outlier, quite honestly.

COMMISSIONER BARAN: So as the Commission is looking at this question, the rulemaking plan, you know, that we have in front of us, if we're kind of getting your input here at this early stage of initiating, what I'm hearing is your recommendation is proceed with a rule for Cat 1 and Cat 2 on financial assurance. Okay.

Now CRCPD administers the NSA source collection of threat reduction program, right, and that's basically --

MR. ALLARD: Yes, yes.

(Simultaneous speaking.)

COMMISSIONER BARAN: -- one of these programs maybe that Jen was eluding to that scatter, that disposes of unused sources. And I think it's good that there's that program and it's doing that work.

I guess kind of as I'm concluding with my time here and I'm thinking about this, the question it raises for me as someone from NRC is what does that say about our regulatory requirements? If you need a taxpayer funded program to go and get all of these unused sources so that they're not abandoned, what does that say about our regulatory requirements and whether they're providing a sufficient incentive to

licensees to manage that themselves and decommission.

MR. ALLARD: I think that's probably the history. It's the history of all these, you know, sources that are out there and they get abandoned. And I think, for the short term anyways, we're going to be living with that and having to deal with -- and having the NRC and DOE both fund the disposal of these sources until we really get our arms around it.

MR. THOMPSON: And part of the scatter program, the licensee has to pay a certain percentage. So it's not 100 percent funded by the government. There is some financial responsibility on part of the licensee. It's not 100 percent, but there again, they are partially responsible.

COMMISSIONER BARAN: Okay. Very well, thank you for your thoughts on that. I appreciate that.

CHAIRMAN SVINICKI: Well, thank you all again. It's been a really interesting Q&A, and to hear my colleagues questions and really taking more the form of a dialogue. I appreciate that very much that we can have some kind of sharing of views back and forth.

You know, there is this old, I don't know if it's Greek or Roman mythology or folklore but there's this tale that if your cares and concerns could take physical form and you got together with a bunch of friends or peers and you all put yours out on the table and you could see everybody else's, you would happily take your own back.

So I think that when we meet with our state regulatory friends and colleagues, we say you know, you have your basket of challenges and we have ours, and I think we all leave here very contented with our lot in life. So appreciate that very much.

And with that, our meeting will be adjourned, but I think that we are taking a group photo, so I would ask our presenters not to move too far. Thank you all.

(Whereupon, the above-entitled matter went off the record at 11:56 a.m.)