



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 20, 1991

ALL AGREEMENT STATES

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION
(LETTER NO. SP-91-86)

Your attention is invited to the attached correspondence which contains:

- ☐ INCIDENT AND EVENT INFORMATION
- ☐ PROGRAM MANAGEMENT INFORMATION
- ☐ TRAINING COURSE INFORMATION
- ☐ TECHNICAL INFORMATION
- ☒ OTHER INFORMATION

Supplementary information: Transcript of June 11, 1991 Briefing of Commission by Agreement States on Compatibility Issues.

If you have further questions regarding this correspondence, please contact the individual named below. Questions may also be faxed to our office at the number below.

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A handwritten signature in cursive script, reading "Vandy L. Miller".

Vandy L. Miller, Assistant Director
for State Agreements Program
State Programs
Office of Governmental and Public Affairs

Enclosure:
As stated

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: BRIEFING BY AGREEMENT STATES ON COMPATIBILITY ISSUES

Location: ROCKVILLE, MARYLAND

Date: JUNE 11, 1991

Pages: 85 PAGES

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING BY AGREEMENT STATES
ON COMPATIBILITY ISSUES

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, June 11, 1991

The Commission met in open session,
pursuant to notice, at 10:00 a.m., Kenneth M. Carr,
Chairman, presiding.

COMMISSIONERS PRESENT:

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

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10:00 a.m.

CHAIRMAN CARR: Good morning, ladies and gentlemen.

The Commission is pleased to be meeting today to hear from the Organization of Agreement States on the results of their Task Force on Compatibility. I would like to welcome Mr. Tom Hill, who is the current chair of the Organization of Agreement States, as well as the members of the Agreement States Task Force on Compatibility who have joined Mr. Hill today.

Copies of Mr. Hill's statement to the Commission will be available at the end of this meeting at the entrances to this room and the task force report has been placed in the public document room.

The Organization of Agreement States provided the task force report on compatibility on March 13th, 1991 to the Commission. On February 12th, the staff submitted an Evaluation of Agreement State Compatibility Issues, SECY-91-039. On April 11th, the Commission deferred action on the staff paper on compatibility so that the below regulatory concern consensus process could proceed unimpeded. The

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1 who is also a member of the task force, could not be
2 with us today.

3 The members of the task force here today
4 collectively have over 100 years of experience in all
5 aspects of radiation control.

6 Mr. Chairman, Commissioners, we thank you
7 for the opportunity to meet with you today to discuss
8 a number of items concerning the relationship in which
9 the agreement states have with the NRC. I will
10 discuss our views on the background of compatibility,
11 some thoughts on our working relationships, ideas on
12 improving the process and note some of the recent
13 actions of NRC. In essence, the agreement states feel
14 they need to have the opportunity to be significantly
15 involved with the NRC in policy and regulation
16 development at an early stage.

17 We hope this meeting will enhance your
18 understanding of our views and some of the concerns
19 we have expressed. We hope that the results will be
20 to improve our longstanding cooperative efforts and
21 enhance the effectiveness of our respective regulatory
22 programs for control of radioactive materials.

23 There is no doubt that the subject of
24 compatibility of agreement state regulations and/or
25 programs is the issue which has most dramatically

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1 Compatibility." The significance of this action
2 should not be underestimated. It was the first formal
3 task force established and supported by the agreement
4 states to address such an issue. The report expressed
5 the views and concerns of a task force of senior
6 agreement state regulatory officials and, indeed,
7 reflects the general views of all agreement states.
8 It covered in some detail our understanding of the
9 historical and legislative background of
10 compatibility, the purpose of compatibility and its
11 relationship to adequacy, a new conceptual framework
12 for compatibility and related questions of how
13 compatibility should be applied and whether the
14 process should be institutionalized. The report
15 contained five recommendations, some on which I will
16 elaborate.

17 The history of the compatibility issue is
18 evolutionary in nature. There appears to have been
19 no detailed plan for its implementation beginning with
20 the first agreement state in 1962. This is probably
21 understandable due to the novel nature of this
22 program. It is a program where the federal authority
23 is relinquished and that authority is assumed by the
24 states. The record indicates the Commission itself
25 has varied in its application of compatibility.

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1 the NRC desires. The logical conclusion, in our view,
2 is that only a few rules or at least only a few nearly
3 identical rules are necessary to provide for an
4 adequate program. The history also reveals that the
5 AEC or the NRC has revisited the issue on occasion and
6 always backed away from a very prescriptive
7 application of compatibility. But it is also our
8 perception that the NRC has attempted to impose a more
9 prescriptive regimen in recent years by unilateral
10 staff action.

11 The agreement states perceptions regarding
12 the NRC's administration on the compatibility concept
13 are worth airing. I want to briefly touch on a few.

14 We believe the NRC's administration of the
15 compatibility concept over the years has been variable
16 and sometimes used too casually.

17 The term "compatibility" has sometimes
18 been used with a lack of clarity, namely implying a
19 mandatory action required of agreement states when
20 even under NRC's internal guidance there are various
21 degrees of compatibility.

22 Some actions of NRC on compatibility
23 appear arbitrary, such as the position on more
24 restrictive standards. Others are inconsistent with
25 NRC's own internal guidance and there have been

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1 providing flexibility for states in the implementation
2 of this program. Congress appeared to be well aware
3 that state programs would differ from that of AEC and
4 NRC in some respects. Clearly, the emphasis was on
5 whether the state program was adequate to protect
6 health and safety. This was reemphasized in the
7 passage of Public Law 96-295 in 1980, the so-called
8 DeConcini amendment.

9 Government and Public Affairs' July 1990
10 "Report of the Compatibility Survey of State Views"
11 takes the position that the Commission has legal
12 authority to require agreement states to adopt
13 criteria that are identical to those promulgated by
14 NRC. We disagree with that interpretation and do not
15 believe it is conducive to the kind of partnership we
16 desire to have with the NRC. Mr. Malsch informed the
17 Agreement States Task Force at its meeting on January
18 the 18th, 1991 that notwithstanding that position the
19 NRC staff had decided that the method for
20 implementation of compatibility is a policy call for
21 the Commission with a wide variety of possible
22 approaches. This is an encouraging position even
23 though the basic issue might remain open.

24 For example, the agreement states are
25 aware of a number of regulatory provisions that are

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1 agreement states regulate other sources of radiation,
2 x-ray machines, accelerators, and naturally occurring
3 radioactive materials. The regulation of these may
4 require modification of NRC rules when adopted by the
5 state . Further, the states, agreement and non-
6 agreement, regulate over 90 percent of the sources of
7 radiation in the United States. We believe a valid
8 concept today is that compatibility is a performance
9 objective. The July 1990 Governmental and Public
10 Affairs report stated that compatibility is a word of
11 art to be used as a guideline in reaching decisions.
12 We agree. We should not take our eye off of what is
13 the real objective of our program and not let the
14 process be confused by procedures.

15 We pointed out in our March report on
16 compatibility examples of major cooperative efforts
17 which have taken place in the past, transportation
18 incidents and the Mexican steel incident. There are
19 others. The point is that we need each other when
20 such events occur. At such time, cooperation takes
21 precedence over other considerations. A similar
22 relationship should prevail when our activities are
23 of a more routine nature.

24 In conducting regulatory programs for
25 agreement materials, the 28 agreement states employ

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1 aspects of new regulations; and

2 The process for applying such criteria to
3 existing regulations and new regulations; as well as

4 Establishment of an implementation
5 committee to carry out the above processes;

6 Additionally, review the concept of
7 divisions of compatibility;

8 The need to review existing NRC policy
9 statements on both pre and post-agreement reviews;

10 The question of need for all states to
11 adopt all rules, for example the irradiator rules;

12 And assist in scoping out a new policy
13 statement on NRC/state relations.

14 The agreement states recommended in 1989
15 and the task force recommended in its report that
16 there should be more clearly defined criteria for
17 determination of compatibility of regulations and that
18 agreement states be actively involved in the
19 development of such criteria.

20 The task force recommended that states be
21 allowed more active involvement with NRC in policy and
22 regulation development that affect the states.

23 The task force affirmed the need for a new
24 policy to be promulgated by NRC on a cooperative
25 relationship with states and implemented throughout

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1 of March 1st which indicates a willingness to hear our
2 views.

3 The March 7th and 8th meeting of six
4 agreement state officials with the NRC staff and with
5 Chairman Carr to discuss these issues and the positive
6 attitudes expressed in those meetings.

7 The workshops NRC has held with agreement
8 states on the medical quality assurance and
9 misadministration rules.

10 The public meetings NRC held during the
11 recent annual meeting of the Conference of Radiation
12 Control Program Directors to receive comments on
13 several pending rulemaking actions.

14 The memorandum of March the 11th from
15 Secretary Chilk to Messrs. Taylor and Denton on
16 improving cooperation with agreement states. This
17 memorandum incorporates some of the themes we have
18 previously articulated.

19 And this, the first opportunity to meet
20 with you to convey our thoughts in person and to
21 continue a dialogue.

22 All of these are considered positive
23 indications of the Commission's intent and we consider
24 them supportive of the actions we wish to see
25 implemented.

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1 we should be able to sit down and communicate the
2 bases for our decisions and I think we have an
3 obligation to do that. I strongly support the
4 suggestion that agreement states are something special
5 and there should be some what of a partnership between
6 us.

7 But I have some problems when you talk--
8 I think there is some importance to having some common
9 standards and definitions and so forth which
10 throughout the country are consistent at a time when
11 I see countries of Europe, in fact countries in North
12 America, trying to come up with common standards
13 because people can see that there difficulties when
14 each individual country or each individual state have
15 different standards, that this can impede people who
16 are trying to work across those various boundaries
17 which can result in confusion. It makes it very
18 difficult to get common data on results of programs
19 of people who are doing things differently. I realize
20 at the same time that not everything need to be the
21 same.

22 Being a newcomer to this question, I've
23 looked at what the various divisions mean and what are
24 in those. And realizing that probably any one of us
25 could question a particular item or element in those

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1 might work together. Do you find those satisfactory
2 or do you have additional components you wish to add
3 to that? Then I'd add to that the further question
4 on the initiation of our working relationship. Is it
5 going okay so far? I realize we're just beginning.
6 This meeting is part of that beginning, but could you
7 give me your impressions of what has been done in the
8 past few months? Is it in the right track? What
9 would you like to see us do differently?

10 MR. HILL: In response specifically, let's
11 use the example of the meeting, public meetings that
12 were held in Wichita on comments on rules. Those were
13 good. They were a very good first step, I think. I
14 received feedback along that same line from other
15 programs. At the same time, with more opportunity in
16 advance for us to prepare, we can provide, I think,
17 better comments. Now, I understand the conditions
18 when that arrangement was made and it was relatively
19 short notice. But I think that there was some
20 meaningful comments made. There was some meaningful
21 input given to NRC on those and with a regularly
22 scheduled or routine meetings along that same long
23 where there is plenty of advanced notice and agreement
24 on what rules should be commented on at those
25 meetings, I think that much more meaningful input

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1 be sure that there aren't some other things. We
2 mentioned some things, I think, in Tom's presentation
3 that can be looked at, the divisions of compatibility.
4 I'm not saying they're necessarily wrong, but
5 certainly they deserve review. The irradiator rules
6 for everybody. Does everybody need a rule for large
7 pool irradiators when they're not going to have one?
8 Maybe they do, but I'm not so sure.

9 So, there are a number of things like that
10 that I think a committee like that would address, just
11 to be sure that you're covering all the bases before
12 you go down the line.

13 COMMISSIONER REMICK: On the irradiator,
14 I wasn't aware of the problem. Are you saying that--
15 you're not saying that somebody should not have a
16 regulation if they did not have an irradiator. I
17 don't know if I said that --

18 MR. KERR: Is it necessary to have an --

19 COMMISSIONER REMICK: Let me think how I
20 said that. In other words, are you saying that it
21 doesn't make sense to have regulations when you don't
22 have the need?

23 MR. KERR: Well, I'm saying that sometimes
24 it's a pretty lengthy regulation and do we need to
25 have -- do those states -- we have them. I mean we

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1 COMMISSIONER REMICK: Sure. Please.

2 MR. LACKER: That is the issue of the need
3 for identical or similar standards and these sorts of
4 things and the more stringent standards concept.
5 Texas just completed its regular legislative session
6 and we'll go into special session next month, but
7 there were a couple of bills affecting our control of
8 naturally-occurring radioactive material in the
9 legislature and as a part of that our uranium tailings
10 regulatory program was involved. A legislative aide,
11 one of the senator's aides who was sponsoring one of
12 the bills called the regional office in Arlington and
13 asked if Texas could have more stringent standards in
14 the uranium thing than the NRC. The answer received
15 was a simple yes. But on the other hand, we hear
16 there are some things we can't have more stringent
17 standards on.

18 So, there's an inconsistency, I guess is
19 what I'm saying, in the responses we're getting from
20 staff, NRC staff and so forth, and if we could have
21 these things more clearly defined, the criteria of
22 what is division 1 compatibility item and what isn't,
23 then the answers could be more consistent in dealing
24 with our own state legislators and with the NRC staff.

25 COMMISSIONER REMICK: See, it's in that

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1 staff to say, "This is our policy on what are the
2 criteria that demands a certain level of compatibility
3 with a rule in all areas."

4 COMMISSIONER REMICK: What I'm trying to
5 decide, I'm just assuming that you agree that there's
6 a need for some standardization.

7 MR. LACKER: Yes.

8 COMMISSIONER REMICK: I think any
9 responsible individual feels that way and it's a
10 question of where do is that line where we begin to
11 differ on the issue of standardization, compatibility?
12 In other words, where are we going too far in
13 insisting upon it and so forth. But I'm not sure I
14 know that.

15 MR. LACKER: I guess that's what we're
16 trying to get to this with this task force concept or
17 committee.

18 COMMISSIONER REMICK: Yes.

19 MR. LACKER: Get these things fleshed out
20 where we can open frank discussion, explore all these
21 things and hopefully come up with a uniform answer to
22 them.

23 COMMISSIONER REMICK: Well, I certainly
24 favor that.

25 Yes, please?

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1 states organized, what is their organizational
2 structure, where do they fall within the organization
3 of the state? Those sorts of things are also looked
4 at during program reviews and comments are made, "You
5 should, you should not, this is the way you should be
6 organized," and that is the state's prerogative on the
7 organization of their various bodies. So that's one
8 of the things, is the program, no matter how it's
9 organized, no matter where it's located, protecting
10 public health and safety and being effective in the
11 implementation of its program for radiation control?

12 Comments?

13 MR. KERR: I'll comment a little bit. It
14 gets back to your more restrictive one because as we
15 indicated in the statement and other places, there are
16 a number of more restrictive rules that are in place
17 in agreement states. They've been there a long time
18 and as far as I know they've not created any problems.
19 Let me just give you an example. The New York
20 Department of Environment Conservation requires
21 concentration of effluence be determined at the point
22 of release. NRC's is at the restricted area boundary.
23 It hasn't created a problem that I know of and they
24 probably did it -- I don't even remember, it was so
25 long ago, but probably because of convenience, easy

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1 look at that as a low level waste site. It is not
2 that. We've had a lot of difficulty in trying to
3 resolve those issues. Now, in my mind, and I think
4 in most people's mind, this is a more restrictive
5 standard because we not allow any low level waste to
6 come to that facility that exceeds those concentration
7 limits, and those limits are quite low. This problem
8 continues to go on.

9 COMMISSIONER CURTISS: I thought you were
10 going to mention a different example. I personally
11 believe, particularly in this area, the low level
12 waste area, that a case can be made that states should
13 be permitted to establish standards that are, in fact,
14 more stringent given the responsibility that was
15 vested in the states in '85 with the statute. Of
16 course Commissioner Remick points to some of the
17 concerns and you alluded to them when you noted that
18 a lot of the interest in developing additional more
19 stringent state standards is driven politically.
20 Frankly, that is of less concern to me because in that
21 context it seems to me the states bear the
22 responsibility for whatever the consequence of their
23 actions is. The statute itself provides that
24 mechanism. I want to get into the question later on
25 of whether you think there are areas beyond the low

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1 with the site operator to have the site operator hold
2 title to the land. It's come up there in Utah, it's
3 come up in Nebraska.

4 Can you address how you handle a situation
5 where -- assuming we all agreed, and I will say
6 frankly I don't think we all do at this point, we have
7 different views on the question of more stringent
8 requirements. But in those cases where there's a
9 disagreement, I guess what I see happening in a couple
10 of cases is the potential that less stringent
11 requirements may, in fact, be adopted in the face of
12 an NRC concern that there be a minimum level. How do
13 you handle that situation?

14 MR. ANDERSON: Well, first of all, I think
15 that things of that nature should be arbitrated
16 between the agreement states and the NRC. In the case
17 in question, our attorney general feels that we are
18 as stringent as the NRC primarily because in Utah
19 should that company fail or should there be any
20 problem in the future, the state would have to condemn
21 that property anyway and take ownership of it. So,
22 at some point, if there is a problem, the state will
23 own it anyway.

24 COMMISSIONER CURTISS: If you had a
25 disagreement though between -- and I understand the

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1 there and in Nebraska.

2 Wayne?

3 MR. KERR: I don't want to get between you
4 and Utah in this or you and Nebraska, but I believe
5 around this Agency there is some memorandums and
6 things like that that say when it comes to
7 interpretation of state law they defer to the state
8 attorney general. I couldn't put my hands on them and
9 tell you where to go, but I recall documents like that
10 were written.

11 COMMISSIONER CURTISS: Yes. The point,
12 I guess, I'm trying to make here is that conceptually,
13 even if we can all agree that more stringent
14 requirements ought to be allowed in this particular
15 area or across the board, as you suggest, I think it
16 is important for you all to focus on the question of
17 what is more stringent and what is less stringent.
18 I'll take a good example. It's very popular these
19 days to suggest that we ought to have emergency
20 planning zones that go out beyond the ten mile zone
21 that the Commission has established. Now,
22 understanding that reactors are obviously not part of
23 the agreement state responsibility, I think it's quite
24 clear that in certain circumstances that bigger EPZs
25 and the need to evacuate and move people, in fact, may

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1 there that you know technically from a public health
2 and safety, it makes no difference. From the
3 standpoint of the ability of the Commissions to carry
4 out its responsibility of reporting these, whether
5 it's congressional mandate or whatever, there could
6 be a problem. So, I just point out that -- and I'm
7 speaking hypothetically, but that's the type thing we
8 can run into.

9 MR. KERR: I think even in the case of New
10 York, they had the authority to give exemptions and
11 allow them to release -- or make the measurements at
12 the boundary.

13 COMMISSIONER REMICK: Yes.

14 MR. KERR: So, like I say, I think it was
15 a matter of convenience that they did it.

16 CHAIRMAN CARR: Mr. Lacker, you had a
17 point?

18 MR. LACKER: Yes. Back to the issue of
19 more stringent, less stringent situations. A personal
20 example, in Texas we have and I have appeared before
21 the Commission with the conference and the ASNT and
22 your staff on the industrial radiography certification
23 program several months ago. Our rule in Texas has
24 been in place a number of years and it has a number
25 of more stringent requirements on the industrial

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1 better what you're referring to.

2 That's all.

3 CHAIRMAN CARR: Commissioner Curtiss?

4 COMMISSIONER CURTISS: In fact, I think
5 that's an important point. One of the reasons that
6 I think we're interested in hearing your views is that
7 I do believe in looking back over the history of the
8 agreement state program and the compatibility issue,
9 how we've treated that, that the agency practice has
10 grown up over the years one layer on top of another
11 in primarily a case by case manner. It appeared to
12 me in some respects that perhaps we weren't being
13 consistent in the application of the notion of
14 compatibility over the years and it would be prudent
15 now to take a look at this.

16 The issue has been brought into sharp
17 focus, I think, as a result of the low level waste
18 compacting process and in that context BRC, which
19 you've already mentioned. I think there are other
20 areas and programs that are obviously of concern, but
21 it does seem to me that it's a timely opportunity now
22 to join the discussion on this issue. In fact, I
23 embrace many of the procedural proposals that you've
24 advanced, set up a task force and get going on
25 discussing an approach to compatibility. It would be

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1 think about. A, the question that I've raised
2 already. I do think it's important to understand
3 whether a particular approach is, in fact, more
4 stringent because I am not a proponent of entertaining
5 approaches that result in less stringent regulation.
6 Frankly, I do have concerns about whether the
7 situation with Envirocare, the situation in Nebraska
8 and what may be emerging in New York might not, in
9 fact, lead to a less stringent approach from the
10 standpoint of long-term custodial care of the site.

11 So, I think the definition of what you
12 consider to be more stringent needs to go beyond the
13 superficial attractiveness of a particular approach
14 and focus on the underlying health and safety
15 objectives.

16 Secondly, I have at least to date not
17 taken a position with respect to whether issues beyond
18 the Low Level Waste Act warrant the application of
19 this concept that you're advancing, which is to say
20 that states ought to be permitted the ability to set
21 more stringent requirements. I do think there are
22 certain areas beyond low level waste where that's
23 clearly intended. In fact, that may be the answer to
24 why you got the response from the staff on mill
25 tailings. The statute itself permits the states to

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1 get two different views on that. You either could or
2 you couldn't. In fact, I think our lawyers have told
3 you and use that we've probably got the flexibility
4 to decide that as a matter of policy. In that case,
5 it does seem to me that it's important to ask yourself
6 as a matter of policy, should we provide that degree
7 of flexibility where there may be every incentive to
8 set requirements that seek to establish zero risk but
9 no accountability that goes along with the consequence
10 of setting those requirements, driven by political
11 reasons but with the upshot being that you impair the
12 ability of licensees to carry out functions that the
13 Congress has endorsed in the Atomic Energy Act. So,
14 that's a second issue that I'd like you to reflect
15 upon.

16 I did have a couple of specific questions
17 here and if you're not prepared to address them, I'll
18 offer them up as well for consideration when we get
19 to the point of more detailed discussions.

20 Is it conceivable that you could have a
21 situation where let's say under our regime today or
22 under the regime as you envision it, where you could
23 have an agreement state program that when initially
24 proposed for our consideration could be declared
25 unacceptable to us for a particular reason, the manner

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1 a state that through time has performed adequately,
2 and this is one of our key points is that we -- my
3 last review I was declared determined to be adequate
4 to protect public health and safety, but not
5 compatible because there were two rules I hadn't got
6 adopted in a timely fashion. They are now adopted,
7 so I should be compatible unless something else is out
8 of kilter.

9 But nevertheless, I can see where our
10 program was adequate and personally I don't feel that
11 the identicality or compatibility of those rules was
12 that critical at that point.

13 COMMISSIONER CURTISS: Okay. Take a
14 specific example and it's not entirely hypothetical.
15 Let's say that under the regime that we have today and
16 the way we approach issues a state has in the low
17 level waste area a requirement, and Illinois is the
18 one I have in mind here, that would establish a more
19 stringent radiation protection standard for whatever
20 site is developed in the state. A program is in
21 place, the requirement was adopted after the program
22 was -- after we relinquished authority to Illinois.
23 By contrast, let's say Pennsylvania, which doesn't yet
24 have the programmatic approval, is proposing exactly
25 that same thing, a radiation protection standard that

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1 it is to stay in.

2 COMMISSIONER CURTISS: That's right.
3 Where we would be sufficiently concerned to say --

4 CHAIRMAN CARR: It's a matter of leverage.

5 COMMISSIONER CURTISS: -- to say no. Yes,
6 I understand the politics of it.

7 MR. KERR: Can I comment on that one? I
8 don't care for your example because I don't think it
9 creates a problem in Pennsylvania. There's no site
10 there today that's going to be disrupted by them
11 putting in a more stringent standard. But let's take
12 a different example. A new agreement state, they're
13 going to turn over several hundred licenses, say 300
14 medical licenses, and that state proposes a scheme
15 that's totally out of sync with what you do. That is
16 extremely disruptive and you don't know what all the
17 impacts are when you turn over that to a state at turn
18 over time.

19 Now, post-agreement, and let's use quality
20 assurance in this administration, it's not the same
21 problem anymore. That's a new requirement or
22 something and the fact that a state does or does not
23 impose that on their medical licensees who don't
24 travel in interstate commerce, do all those things,
25 to me should not be a problem for the NRC.

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1 Is that reasonably ayman's words
2 accurate, Marty?

3 MR. MALSCH: Yes. We've said that you
4 apply the same standards, both adequacy and
5 compatibility both, in entering into the original
6 agreement and in considering whether to take an
7 agreement back. I think though that there is a
8 distinction and it's like the distinction between
9 issuing an operating license and taking enforcement
10 action. That is to say in entering into the original
11 agreement, the Commission has to affirmatively make
12 the findings of adequacy and compatibility. There's
13 no statutory requirement that each and every minute
14 or year when an agreement is in place, that the agency
15 makes continuing findings of compatibility and
16 adequacy. So, there's room for a sort of enforcement
17 discretion.

18 For example, if you were considering an
19 original agreement and the state was considering some
20 requirement be considered as a matter of compatibility
21 but hadn't incorporated it yet, we might be in a
22 position of denying the agreement status until they
23 put their regulation in place. Once you had an
24 agreement in effect and there was some missing piece
25 and the state said, "Give me another couple of years,"

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1 comes i with exactly the same judge and says,
2 "You're not objecting to that approach for state aid.
3 Why won't you give us that arrangement here in state
4 B?"

5 In a similar way it's come up in Nebraska.
6 Nebraska is looking at the land ownership question.
7 I was out there recently and they consistently and
8 clearly pointed to Utah and said, "You let it happen
9 in Utah. You didn't have any objection there to the
10 way they proposed to treat the land ownership
11 question. Why not here?" That's the concern I have.

12 I guess I don't have any other questions,
13 but I'd be remiss if I didn't say I'd like to welcome
14 you, along with the Chairman, here. I think is an
15 important opportunity for us. I've read your task
16 force report. I've had an opportunity to talk about
17 this issue with many of you and I think you've done
18 a considerable amount of work already on this issue
19 and I think help sharpen the focus on the questions
20 that we'd like to come to grips with. I do believe
21 that your proposal to establish a strategy task force
22 with joint participation on your side of the table and
23 ours would be a productive way to proceed and I look
24 forward to working with you in the future.

25 CHAIRMAN CARR: Commissioner Rogers?

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1 the ownership is a very, very important sense that any
2 organization has to have towards carrying out its
3 responsibilities. What we do should, in my view,
4 always tend to enhance a sense of ownership and not
5 to detract from it.

6 Having said that, however, I do feel
7 concerned about the question of differences in
8 standards and this question of stringency because your
9 very forthright answer to the "why would anybody want
10 to impose a new, more stringent standard, local
11 politics," gives me a great deal of problem because
12 I understand the process that the NRC staff has to go
13 through when they come up with some kind of a
14 standard. It's a public process. We hear from
15 everybody who has any -- was at all affected by it and
16 has an interest in it. All of these inputs are
17 carefully looked at, evaluated. Maybe you may feel
18 that at the end result of all that we've come to the
19 wrong answer, but nevertheless they're very carefully
20 looked at.

21 It's a very formal, cumbersome process,
22 partly responsible for the kind of problem that you
23 cited, Mr. Anderson, that the NRC is reluctant to
24 consider anything new. Partly they're reluctant to
25 consider anything new because they understand how

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not only an analysis of what that new standard might be but what the uncertainty in meeting that standard might be. Have you created less of a credible situation in protecting the public's health and safety by a so-called new stringent standard than the one that you're supplanting that the NRC has already put in place?

This whole question of uncertainty in standards, in meeting standards, I think is something that has to be addressed in launching any kind of a new, so-called more stringent standard. It's not always clear that what looks at first to be more stringent is, in fact, better for public health and safety. For example, a more stringent off-site release of radiation at a particular site may look as if it's better to protect public health and safety, but it might actually increase occupational doses on the site in such a way that there are more people that are adversely affected by that change in the standard than there would have been with a slightly more relaxed radiation release standard from the site itself.

So, I think that these are complex issues. They have to be looked at from all points of view and I would be concerned about the notion that it is the

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1 stringen. standards would come about f they were to
2 be imposed, although I'm not absolutely opposed to the
3 notion of considering more stringent standards if they
4 really are more stringent.

5 That's it.

6 MR. ANDERSON: I'd like to respond to that
7 a little bit. I think it's very interesting that you
8 think that it's the state's responsibility and Utah
9 has taken that position. It was debated quite a bit
10 with your staff and the state law says that we cannot
11 adopt standards that are more restrictive than the
12 federal standards without going through a very long
13 and lengthy process of demonstrating the impacts on
14 the public health and safety. NRC at that point took
15 exception to that rule and we had a very difficult
16 time convincing them that that was appropriate. What
17 I'm hearing you say now is that you believe that that
18 would be an appropriate position.

19 COMMISSIONER ROGERS: Well, I'm saying
20 what I'm saying right now here at this point in time,
21 Ken Rogers. But I don't know what somebody else said
22 at some earlier point in time and why they said it.

23 MR. ANDERSON: This is not too far ago.
24 This was just several years ago.

25 COMMISSIONER ROGERS: Well, all I can say

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1 very free y ideas and perceptions and difficulties in
2 carrying out our individual responsibilities and I
3 generally feel that your proposal to create some kind
4 of a mechanism to do this in a more formal way is a
5 good one, that I tend to be receptive to.

6 What kind of a time frame though are you
7 looking for for something significant to happen? I
8 mean suppose that we did move ahead with creating some
9 kind of a group that started to look at the issues
10 that you've raised? What time frame would you expect
11 some kind of significant proposals to be acted upon
12 and be in place? What are you looking for? Years?
13 Ten years?

14 MR. LACKER: Well, I'll give my view. I
15 don't think we've discussed this in terms of time
16 frame as a task group or a committee, but I would much
17 prefer at this point to take all the time necessary
18 to be sure the decisions that are made and proposed
19 are appropriate than to be in a hurry and then have
20 to come back and reinvent the wheel in another five
21 years or something.

22 COMMISSIONER ROGERS: Are you talking
23 about essentially an ad hoc approach, some kind of a
24 group that would be formed that would come forward
25 with some proposals and then launch those and

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1 particularly for travel, are difficult for some states
2 to get together and that you'd like to see not a
3 collection of individual meetings that people have to
4 struggle to get to, but to use existing annual
5 meetings to focus on these issues and act as a
6 mechanism for bringing people together and perhaps
7 extending a meeting a little bit around a particular
8 annual -- on an annual basis.

9 Do you think that that provides enough
10 continuity to the process? Would people be willing
11 to wait until the next annual meeting to bring up
12 something that they felt needed a broad discussion or
13 do they feel that sometimes it's more important to--

14 MR. ANDERSON: We have the two meetings
15 a year and it may be that we need more than that, but
16 I think we need to start somewhere to find out what
17 we really do need.

18 COMMISSIONER ROGERS: You've got to call
19 us around those two meetings rather than have --

20 MS. DICUS: Realistically, I don't think
21 that we can say we would only be able to use those.
22 I think to address the issues that we have to address,
23 certainly a group would have to meet perhaps more
24 frequently, depending upon what the issue is. It is
25 a problem for some of the states, of course, to be

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1 perhaps is an avenue to make that decision, and the
2 working group could be one of the ways to address it,
3 not necessarily the only way. It may come down to
4 being a legal opinion and clearly we can't do that.
5 But it provides that avenue.

6 COMMISSIONER ROGERS: Anybody else have
7 any comments on this?

8 Well, I encourage you in your reaching out
9 to us to come together on these things. I think it's
10 a good move. Thank you very much.

11 CHAIRMAN CARR: In the effort to get the
12 agreement states involved earlier, I guess I've run
13 across a "how early is earlier" question because I
14 don't know what point you want to get involved in our
15 process. It takes a long time, our process. We can
16 spend all your time working on our rules that you've
17 got. So, do you have any suggestions on how we can
18 do that, improve that process, and when we should get
19 you in earlier or a method of going about that?

20 MR. KERR: I have a suggestion. Somewhere
21 along the line where the NRC staff identifies what
22 they believe is an issue that needs to be addressed
23 by example for a rule, a rule for example, they might
24 consider writing a concept paper that says, "Hey, here
25 are certain elements that have appeared to us that are

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1 said those were helpful. How much help were they?
2 What kind of help did you get out of those?

3 MR. HILL: Those states and those
4 individuals that were participating felt that we had
5 an opportunity to get their comments made and to have
6 an effective input into the outcome and the shape of
7 those proposed regulations.

8 CHAIRMAN CARR: We've got a lot of people
9 who feel like they got their input in but they didn't
10 like the output that came out

11 MR. HILL: That happened in some cases.
12 It happens.

13 MR. ANDERSON: I participated in those and
14 I thought it was very well done. We got some changes
15 made that we thought were necessary and that were very
16 helpful to be able to present to staff our position.

17 CHAIRMAN CARR: That type of interaction
18 is reasonably okay the way it's working or would you
19 suggest we could do better than that?

20 MR. ANDERSON: Well, I guess we can always
21 do better, but I thought what we did do was very good.

22 CHAIRMAN CARR: On the Wichita meeting,
23 it sounded like you needed more time to prepare and
24 your comment said you need regularly scheduled and
25 routine meetings. I don't know how easy that's going

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1 to do that too. I guess I'm trying to figure out
2 what's the problem that you've got as agreement states
3 that they don't have as nonagreement states.

4 MR. KERR: No, but the staff may come to
5 us and say, "You've got to adopt that identical to
6 ours," see, because it's in Part 20.

7 MR. LACKER: The nonagreement state does
8 not have to be compatible or identical to the Nuclear
9 Regulatory Commission and there are other areas that
10 they regulate.

11 CHAIRMAN CARR: But you certainly don't
12 have to take ours and apply it to x-ray machines,
13 accelerators and other sources in NORM?

14 MR. KERR: Many of the definitions we use
15 in radiation protection standards.

16 CHAIRMAN CARR: But that's your option.

17 MR. KERR: I understand, but what it would
18 mean, then, you'd have a second definition for those
19 things and we just don't --

20 CHAIRMAN CARR: But you have the option.

21 MR. ANDERSON: We have the option.

22 CHAIRMAN CARR: I mean, I'm trying to
23 remember that you have other things to regulate, but
24 I don't see why it's any different than anybody else.

25 MR. ANDERSON: We get into the same

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1 situatio. chat Commissioner Remick v talking about
2 where you have two sets of standards applying to
3 somebody and --

4 CHAIRMAN CARR: Couldn't agree more.

5 MR. ANDERSON: -- that's terrible.

6 CHAIRMAN CARR: And I think that's why
7 it's nice to have compatibility.

8 MR. ANDERSON: Yes, and we agree with
9 that.

10 COMMISSIONER ROGERS: But they want
11 internal compatibility within their shop as well.

12 MR. ANDERSON: Right.

13 COMMISSIONER ROGERS: Not just
14 compatibility with us, but compatibility internally.

15 MR. ANDERSON: Across the board, yes.

16 CHAIRMAN CARR: You say that "some of the
17 NRC actions on compatibility are inconsistent with our
18 own internal guidance and there have been
19 pronouncements of compatibility on rules not yet
20 written."

21 You got a couple of those examples you
22 want to throw out?

23 MR. ANDERSON: The medical QA, before
24 what's before you now was that way. It was listed as
25 Division 3, matter of compatibility.

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1 other states have not chosen to take advantage of the
2 agreement. Most of us in the states that are
3 agreement states have done it primarily because the
4 Atomic Energy Act is limited in its scope of
5 regulation of radioactive material and radiation and
6 it seems appropriate that it all be regulated the same
7 way. And so from our standpoint in the agreement
8 states, we have a total program regulating all
9 radioactive material.

10 CHAIRMAN CARR: Well, when I'm looking for
11 comments on our rules and regulations, I guess I'm a
12 little puzzled by the role of the state liaison
13 officers. Some of them -- some of you are those and
14 some of them are not. So, when I go out to get a
15 state's position on something, it would be great to
16 have a point of contact that says, "Yes, this is the
17 state's position. I can deliver the governor and the
18 legislature." That's what I look to the state liaison
19 officer for. I mean, that's the guy I want to deal
20 with because I think he can speak for the state and
21 the legislature and deliver that vote, maybe.

22 Is that a misimpression?

23 MR. ANDERSON: I think we can say we can
24 deliver the governor in most cases, but delivering the
25 legislature is something else.

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1 it is a problem. Those cases where the ESLO is the
2 radiation person or at least is aware of the issues,
3 it's going to be fine because the person should also
4 be able to have direct access to the governor and
5 probably has some influence with the legislature,
6 although that's always shaky anyway. But in those
7 cases where it isn't, then you may not be getting to
8 the right person.

9 CHAIRMAN CARR: Let me ask it a different
10 way. Is a collateral duty in most states with another
11 function or is it a primary duty?

12 MR. ANDERSON: It's about 50/50.

13 MS. DICUS: It's 50/50, I think.

14 CHAIRMAN CARR: Okay.

15 MR. ANDERSON: I personally think it ought
16 to be the same person in all states, the radiation
17 people, because they're the ones who have to deal with
18 it.

19 CHAIRMAN CARR: I do too. But I'm not the
20 governor, so I can't appoint anybody.

21 MR. ANDERSON: That's the hard part.
22 That's right.

23 CHAIRMAN CARR: Shall we make a rule?

24 MR. ANDERSON: Not if it's an issue of
25 compatibility.

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1 I have a hard time every seeing anything come out of
2 the bottom that you can look back and say "We got
3 something done." So, we'll have to be careful in
4 that.

5 On innovation and the successful programs
6 the agreement states have got, what's the best way the
7 NRC can pick up on those successful programs that we
8 should perhaps be picking up on that we're not? I
9 mean, if you've got something good out there, you want
10 us to put it on everybody? Shall we make it a matter
11 of compatibility so you're now well and everybody else
12 has to get well?

13 MR. ANDERSON: Yes, we thought that would
14 be a good idea.

15 CHAIRMAN CARR: The reason I say that is
16 that when I'm trying to get these states in agreement
17 I thought the first easiest thing would be to get a
18 common manifest for the three sited states. I
19 thought, "Gee, that seems simple. If they're all
20 going to put away low-level waste in accordance with
21 an Act, it would be a simple thing to have a common
22 manifest, ship it anywhere." We're going to have to
23 make that by rule, and that's what worries me about
24 getting 50 of those guys to agree when I couldn't get
25 three. So, I don't know.

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1 kind of lead the performance objective part was to
2 look is the objective of what we're trying to do being
3 reached by your program --

4 MR. ANDERSON: Absolutely.

5 CHAIRMAN CARR: -- even if it isn't the
6 exact program that we think ought to be there. Is the
7 objective being achieved?

8 MR. ANDERSON: Yes.

9 CHAIRMAN CARR: And I gather that's what
10 you meant by "performance objective."

11 Did the agreement states, the Organization
12 of Agreement States, have you taken a view on limited
13 agreements?

14 MR. ANDERSON: Not officially.

15 MS. DICUS: No, not officially.

16 CHAIRMAN CARR: Well, you may just want
17 to leave it there, if you don't have --

18 MS. DICUS: I think many of us disagree
19 with the concept of limited agreements.

20 CHAIRMAN CARR: All right. We'll just
21 pass on that.

22 Any other questions?

23 COMMISSIONER ROGERS: I just had a
24 thought. Have you -- this question of compatibility
25 within your own organizations, have you any mechanism

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1 MS. DICUS: Yes.

2 COMMISSIONER ROGERS: I'd be interested

3 in hearing more about that from you if you could share

4 that with me. I'm sure other Commissioners would

5 appreciate it as well.

6 CHAIRMAN CARR: Go ahead, Jim.

7 COMMISSIONER CURTISS: One point of

8 clarification, Mr. Anderson, on the Utah situation you

9 alluded to in response to Commissioner Rogers'

10 question, the statute that you have in the state that

11 I take it requires some sort of analysis of what the

12 overall effect of being more stringent is.

13 MR. ANDERSON: That's correct.

14 COMMISSIONER CURTISS: In the case of the

15 land ownership question for Envirocare, is it your

16 intent to process that under that statute on the

17 grounds that what you have in mind is more stringent

18 or do you have in mind taking an exemption from the

19 requirements of Part 61?

20 MR. ANDERSON: Well, we took an exemption

21 is what we did and that was taken several years ago.

22 We intended to take it again with respect to the use

23 of byproduct and source materials going into that

24 facility.

25 One interesting thing that has come out

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1 question . 'm trying to get at is, is the action that
2 you have taken so far and short of the legislation
3 actually being enacted in the exception or exemption
4 that you've granted from the land ownership
5 requirements, was that based upon an analysis that
6 that result would in fact be more stringent as that
7 statute seems to require?

8 MR. ANDERSON: No. That exception was
9 granted before the state law was enacted, and so it
10 wasn't retroactive. We'll have to go back and redo
11 that.

12 COMMISSIONER CURTISS: If you were to
13 grant exceptions or exemptions today, I guess you'd
14 be required --

15 MR. ANDERSON: That's correct.

16 COMMISSIONER CURTISS: -- to go through
17 that analysis?

18 MR. ANDERSON: That's correct.

19 COMMISSIONER CURTISS: Okay. Thank you.
20 That's all I have.

21 CHAIRMAN CARR: Thank you, Mr. Hill and
22 members of the task force, for a useful report on the
23 agreement states' views on compatibility and other
24 regulatory issues of interest to the states.

25 I heartily agree that you should have the

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1 concerns early in the regulatory development process.
2 I also believe it's important that we allow the
3 process for early involvement a change to work,
4 because the improvements gained in this process of
5 incorporating state concerns earlier into our
6 regulatory activities should contribute to reducing
7 some concerns about compatibility.

8 As a basis for the Commission's further
9 evaluation of agreement state compatibility issues,
10 the staff should seek input from materials users and
11 waste generators as well as other affected parties on
12 the advantages and disadvantages of a uniform national
13 approach to radiation safety matters. The staff
14 should also seek views on providing the states
15 flexibility to address local needs and conditions.
16 Based on the input from agreement states as well as
17 input from other affected parties, the staff should
18 provide the Commission with a recommended approach to
19 address compatibility issues. This will serve as the
20 basis for the Commission action on SECY-91-039.

21 Do any of my fellow Commissioners have any
22 further questions or comments?

23 I would only suggest that one of our
24 common problems pretty quick is going to be fees.
25 You're going to have a big influx of fee'd people into

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1 (Whereupon, at 11:50 a.m., the above-
2 entitled matter was adjourned.)
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SCHEDULING NOTES

Title: Briefing by Agreement States on Compatibility Issues

Scheduled: 10:00 a.m., Tuesday, June 11, 1991 (OPEN)

Duration: Approx 1-1/2 hrs

Participants: - Thomas E. Hill, Chairman 30 mins
Organization of Agreement States

Other Attendees

(Agreement States Task Force on Compatibility)

- Wayne Kerr, Assistant Director
Office of Radiation Safety
Illinois Department of Nuclear Safety
Chairman, Agreement States Task Force on
Compatibility
- Greta Dicus, Director
Division of Radiation Control and
Emergency Management
Arkansas Department of Health
- David K. Lacker, Chief
Bureau of Radiation Control
Texas Department of Health
- Larry Anderson, Director
Bureau of Radiation Control
Utah Department of Health