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and the 1993 All Agreement
States Meeting

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 OFFICE OF STATE PROGRAMS

4 ***

5 PUBLIC MEETING ON REGULATIONS
6 AND THE 1993 ALL AGREEMENT STATES MEETING

7 ***

8
9 Fiesta Inn
10 2100 S. Priest
11 Tempe, Arizona

12
13 Sunday, October 24, 1993
14

15 The above-entitled meeting was convened, pursuant
16 to notice, at 4:00 p.m.

17
18 BEFORE:

19 SHELDON SCHWARTZ
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P R O C E E D I N G S

[4:00 p.m.]

MR. SCHWARTZ: Well, ladies and gentlemen, welcome. This is our first session of what I consider to be a rather long, but important Agreement State Program agenda. We're hitting, as you know, a number of very important areas. And one of the reasons -- and you can blame me, for causing this session to happen on a Sunday -- I wanted us to begin a dialogue on the issue of compatibility, to continue that dialogue today, but more importantly to have more of your ideas and understanding and appreciation and thoughts on the subject of compatibility as we go through this meeting. So the close of the meeting today, I don't consider the close of discussions on compatibility, by any stretch of the imagination.

As you know, we've had a number of discussions, meetings, formal and informal get-togethers to discuss the matter of compatibility. At the commission, we've probably had, over the last few years, about four commission papers or more dealing with the subject of compatibility and we've received at least as many directions from the commission through staff requirements memo on the subject of compatibility over the last few years.

We've had, as I said, a number of meetings, both formal and informal, over the years, and what I wanted to go

1 through with you today is some of the things that happened
2 at the July 26-27 workshop on compatibility, to discuss with
3 you briefly what went on at the commission meeting on August
4 30th on compatibility.

5 My personal expectations, and with your
6 permission, let me share them with you, my personal
7 expectations for this session on compatibility is first, as
8 I said, to review where we've been in the discussions, both
9 formal, informal, papers written on the issue of
10 compatibility, to discuss various policy options and any
11 options that you may have for discussion on compatibility.
12 And it's not a federal government trick in the paper that's
13 passed out that says, "Options for Compatibility," there are
14 no options in the paper. It's not a trick. There are no
15 options included in that paper. I'll be discussing them.

16 I'd like -- my expectations, again, are to look at
17 the details of both the programmatic and regulations dealing
18 with compatibility; not in the abstract, but hopefully
19 details, what do we mean by "compatibility"? But more
20 importantly, what do we mean by "adequacy"? And once we
21 move and understand what we mean by "adequacy" perhaps we
22 can then describe what it is we need for describing
23 "compatibility." And I'll get into some of those
24 discussions.

25 I'd like to have a common understanding of what it

1 is that we signed on to when we signed the agreements that
2 said we want to maintain a program that's adequate. As I
3 said, the handout is a guide to stimulate the discussion,
4 and I hope that we conclude the discussion today, and maybe,
5 as I said, the continuing discussions, with an attempt to
6 draw some lines, to draw some lines as to what is adequate,
7 and if you consider a program a compatibility program that's
8 flexible, what are those added subjects, added elements that
9 would be added for compatibility to that core program for
10 adequacy, for a flexible program, and what additional items
11 would be added to have a compatibility program that is
12 uniform. And I've got one view graph that will hopefully
13 stimulate discussion.

14 Okay. In going through the -- I'll try to go
15 through it as quickly as I can so we can get into some
16 discussion. In the handout it starts out with the second
17 page it says, "Background", and it says,

18 "Past agreements state compatibility concerns."

19 I guess what we're discussing there is Greta Dicus
20 letter of November 16, 1989 where the discussion of
21 compatibility was raised. And then followed up by Tom
22 Hill's letter of January 24th, 1991 where there are a number
23 of questions on compatibility. And let me, for the record,
24 let me just read what those questions are, because they're
25 germane to these discussions today.

1 "1. What's the meaning of compatibility?

2 "2. To what does compatibility apply? Regulation
3 provisions, totality of all radiation program elements,
4 administration of the programs, et cetera?

5 "3. How is it implemented? At NRC's discretion
6 as a joint effort, or is there yet some other approach which
7 has not been determined?

8 "4. What is the legislative historical background
9 of this issue and has that frame of reference been used in
10 carrying out the NRC Agreement State Program since 1962"?

11 And lastly, most important, underlined,

12 "How does the implementation of compatibility
13 relate to protection of public health and safety"?

14 And those questions are as valid today as they
15 were when they were written in January of 1991.

16 There were a number of commission papers that were
17 written that many of you have seen and has been discussed at
18 the various meetings we've had dealing with compatibility,
19 but the most important one, I guess, is when the commission
20 directed the staff, on January 22nd, 1993, to develop a
21 policy on compatibility. Since that time we've had the
22 establishment of a working group, and the working group was
23 a working group of NRC folks with myself and State Programs,
24 representative of Nuclear Material Safety and Safeguards,
25 Fred Combs, who's here today; Research and also General

1 Counsel's office, and Marty Malsch is representing the
2 General Counsel's office.

3 Also included in the discussions of the working
4 group, we were very fortunate to have Wayne Kerr and Bob
5 Kulikowski and Tom Hill join us. And also, we had Jerry
6 Parker, who helped us as a consultant, and also Terry Frazee
7 from the state of Washington, who really did yeomen's work
8 in putting together the issues paper that we used at a
9 number of meetings and discussions, and it framed, I think,
10 all the issues associated with the subject of compatibility.

11 We had the discussions on May 20th in San
12 Francisco where we filled a record on discussions on
13 compatibility. We had a workshop July 26th-27th in
14 Rockville. And I'd like to go through the perceptions that
15 I had of what we heard at that meeting as part of my -- and
16 I also briefed the commission on August 30th on what went on
17 at that meeting. Let me review what I told the commission
18 with respect to that meeting and also some staff
19 discussions, working group discussions on the issue of
20 compatibility.

21 The issues that we heard at the meeting of July
22 26th-27th, was one, that there was and continues to be a
23 strong NRC state commitment and state federal partnership,
24 that radiation protection standard should be uniform.
25 However, there was no clear definition offered. That the

1 states want flexibility, they want the flexibility to
2 accommodate local conditions. That industry wants
3 uniformity, industry would like to deal with all states
4 using the same standards, the same way of doing business.
5 Public interest groups, they want the ability for local
6 government to go beyond federal or state standards, they
7 want total flexibility. And those were the nuances of what
8 I think we heard at the public meeting.

9 We also heard that perhaps a term that should be
10 used instead of compatibility would be a coordinated
11 program. Proposed rule making should include Agreement
12 State licensee comments, we also heard that at a number of
13 the workshops. Again, we need a core set of regulations,
14 but it was undefined. There's also the notion of an
15 enhanced CRCPD process for suggested state regulations may
16 serve the regulatory needs for the regulated -- for the
17 regulators. Again, protection of the public health and
18 safety is the primary mission.

19 The near-term actions, the near-term options that
20 were discussed with the commission, there were three. One
21 was, what I call, an enhanced status quo. An enhanced
22 status quo would be to maintain -- the table would be seven,
23 to sharpen the definitions, but to go forward with the same
24 kind of divisions; but the enhanced portion would be the
25 enhanced state involvement, early and substantively in rule

1 makings.

2 Also discussed, in some detail, what we would call
3 a coordinated program, and that was to work with the states
4 very closely on a program of making sure we're all
5 coordinated with one another on what compatibility was and
6 how we would evaluate the state's compatibility program.

7 And the final option was to combine adequacy and
8 compatibility determinations; to make one finding of
9 adequacy and compatibility. There were other -- a few other
10 items, but not related directly to the item of
11 compatibility.

12 The commission then responded to that briefing and
13 said, well, you did talk about the Conference of Radiation
14 Control Program directives and standards, and we'd like to
15 know more about the conference, what standards, how they do
16 their work. What are the differences and what are the
17 similarities between the conference regulation, suggested
18 state regulations and the NRC's? What are the standards?
19 Do they develop standards or don't they? Adopt NRC
20 standards? And those kinds of questions. So we're working
21 on that. I'll talk to Ray Paris a little bit and try to get
22 his insight as well.

23 The other thing the commission said was, there is
24 a legislative mandate that we make separate adequacy and
25 compatibility determinations; that we cannot combine the

1 adequacy and compatibility determinations as we had
2 discussed. That pretty much summarizes how we finished up
3 with the commission brief on August 30th.

4 On view graph two that you have in front of you, I
5 think all of you understand Section 274, "Background." That
6 in Section 274 there is not an explicit definition of
7 "compatibility," that there's a general concept of
8 uniformity and avoiding conflicts and overlaps, and that the
9 scope of compatibility could include program elements,
10 regulations and/or procedures.

11 The principles -- next view graph, three, the
12 principles upon Section 274 recognizes the interest of the
13 states, it recognizes the need for cooperation between the
14 commission and the states, it recognizes the needs to
15 promote an orderly regulatory pattern between the commission
16 and the states and to provide for coordination development
17 of radiation standards and other policies.

18 Since there is a requirement to do two separate
19 findings, adequacy and compatibility, and there is no
20 legislative guidance on adequacy, we thought about coming up
21 with what we felt was a reasonable definition of "adequacy."
22 And that is, a program with all its elements, including
23 standards, organization and resources, necessary to maintain
24 some minimally acceptable level of protection. The word
25 "minimally" is -- I really don't like the word "minimally."

1 I like "some acceptable level of protection." I don't --
2 "minimal" bothers me a little bit.

3 And lastly, there's some legislative guidance
4 regarding the intended meaning of "compatibility" that
5 supports the general concept of uniform national standards.

6 All right, now we've looked at compatibility and
7 tried to look at compatibility as a separate item, but we
8 keep bumping into what is the relationship to adequacy. We
9 keep bumping into the issue of early-on substantive
10 involvement of the Agreement States, and also the issue of
11 having regulations in place soon, and not wait three years,
12 or regulations implemented in less than three years when
13 they have a significant public health and safety impact. I
14 think those issues are really on the side. They're
15 important issues, but they don't add to the definition of
16 "compatibility."

17 The questions on page five, which are the ones
18 we've considered in identifying compatibility, focuses on
19 first, what's adequacy? That's really the basic. And then
20 you step off from adequacy to what is necessary for
21 compatibility. And by answering these questions, it brings
22 us closer, I think, it brings us closer to the understanding
23 of, perhaps, the legislative understanding, but at least the
24 policy understanding that we can hopefully work together on
25 what compatibility is and how it should be implemented.

1 I don't need to go through the questions, in case
2 anybody wants to, but when you get down to the bottom one,

3 "Should the state program include some attributes
4 solely or primarily to support an NRC safety initiative"?

5 An example on that would be the Site Decommission
6 and Management Program, the SDMP program, the looking for
7 contaminated sites using the same standards to close them
8 out.

9 What I'd like to do, with your permission, next is
10 to open the floor for some discussions, but I want to flick
11 a slide on, and it will be the only slide that I'm going to
12 use, and this is an attempt, and it's not exhaustive, it's
13 an attempt to define what are the example elements required
14 for an adequate program. And those, I think, maybe they're
15 not exhaustive, but they cover the basis for the program
16 element that a program was signed off on when the agreement
17 was signed. That those elements were in place -- well, I
18 see a lot of heads shaking yes and no, but that's okay --
19 what are the elements required for -- and we can move things
20 around, strike them, but I want to get your pros and cons.
21 I want your input on this so that we can have an
22 understanding of what it is an adequate program is or is
23 not. What is required for an adequate program? What does
24 the current policy statement say an adequate program is?
25 What do we look at -- and Jack and Bob Dode are the folks

1 here, what do we look at to make sure that a program is
2 adequate? And then we could start looking at what are the
3 example elements of a compatible program, if you consider
4 one, a flexible policy or again, the other end of the
5 spectrum, a uniform policy.

6 Marty, do you want -- I was going to break.
7 Marty, is there anything you want to add?

8 MR. MALSCH: Yeah, let me just add a few comments.
9 What we've done is we've really taken a fresh look at the
10 statute and the history and tried to come up with a
11 discipline process for looking at adequacy and
12 compatibility.

13 And we've done so from two perspectives. One,
14 from the perspective that they're two different terms in the
15 statute, and must mean two different things, or perhaps only
16 two slightly different things.

17 MR. SCHWARTZ: Marty? They can't hear you in the
18 back.

19 MR. MALSCH: I'm sorry, pardon?

20 MR. SCHWARTZ: They can't hear you in the back.

21 MR. MALSCH: Oh. We've taken a fresh look at the
22 statute and tried to develop a fresh understanding of the
23 terms "adequacy" and "compatibility," and we've developed
24 two perspectives on this. One would be that since the
25 statute uses two different terms, the two terms must mean

1 two different things, or at least two slightly different
2 things.

3 And that leads to the precise framing of the
4 question, which is, first of all, you must decide what is an
5 adequate program. And we've phrased that here in terms of a
6 program which has those attributes which provide for at
7 least some acceptably minimal level of protection of the
8 public health and safety. It may not be ideal, but it is
9 certainly sufficient, certainly adequate.

10 If we define, then, "adequacy" in that fashion,
11 the question for "compatibility" therefore is, what
12 attributes of an adequate program would NRC become concerned
13 about in terms of a compatible program? Or put another way,
14 what would lead NRC to inquire about revisions or changes,
15 or maybe even recisions of a state program which was
16 functioning adequately for reasons not related to adequacy
17 but related to compatibility? And so, we tried to think of
18 those things in the compatibility bin that are separate from
19 adequacy.

20 And if you look at the chart here, that's going to
21 impose some considerable discipline on all of us here in
22 terms of analyzing the issues. Looking at the left-hand
23 column, you know, if we ask ourselves what are the elements
24 of an adequate program, and you go through the prior
25 commission guidance on the subject, and the results, I

1 think, are murky at best. We've not always drawn these
2 kinds of distinctions. And you go back through rule makings
3 over the years, you see some conclusionary statements about
4 how the commission has decided this is, you know, would
5 provide for an acceptable level of protection or would
6 promote the public health and safety, and not often were
7 judgments were made as to exactly how important these things
8 were.

9 And so we've got to look at the program to decide
10 for ourselves, with your assistance, what exactly are the
11 elements of an adequate program. Now that's a difficult
12 enough job if you're going to be precise and careful and
13 discriminating about it, but once you decide that, then you
14 have the more difficult job, perhaps, of deciding, well, all
15 right, what in addition should we ask for in terms of
16 compatibility?

17 And just for illustrative purposes, take the first
18 item on the chart, which is "Misadministration" --

19 MR. SCHWARTZ: That's the second.

20 MR. MALSCH: Second? What's the first one? I
21 can't see it.

22 MR. SCHWARTZ: "Basic Radiation Protection --"

23 MR. MALSCH: All right. Let's take the second
24 one, "Misadministrations."

25 [Laughter.]

1 MR. MALSCH: I suppose we could say an adequate
2 program is a program which has some minimum level of
3 reporting medical misadministrations. And that would be an
4 adequate program. Well, what in addition would we ask for
5 in terms of a compatible program? Well, that's going to
6 depend upon what factors you might consider in deciding on
7 compatibility. And there are two ranges of the spectrum.
8 We could decide that it's up to you. As long as you had the
9 minimum requirement, what else you chose to do was entirely
10 up to you, depending upon your assessment of local
11 conditions. Or in some other extreme we might decide that a
12 whole bunch of things associated with the misadministration
13 rule are sufficiently important from a national perspective;
14 for example, criteria and patient follow-up, we might ask
15 you to do it. Even though we couldn't, in our hearts, say
16 that without it your program was inadequate.

17 And you go through a similar analysis all the way
18 down the chart. And that would be, for completeness, would
19 have to cover, you know, large parts of our regulations, 30,
20 40 and 70, some of the other parts, large parts of programs,
21 because this would apply not just to regulations but to the
22 whole programs. The statute talks about an adequate and
23 compatible program, not just adequate and compatible
24 regulations.

25 And so if we follow this kind of a discipline,

1 we're faced with a very substantial task working with you to
2 not only develop the basic framework and decide on which
3 factors would be considered in defining an adequate program,
4 if the program was already -- deciding with you on what is a
5 compatible program, considering the program may have already
6 been adequate. And even once we decide what the basic
7 criteria or framework are, going through all the regulations
8 and program elements and deciding, in a sort of analytical
9 discipline process, which things fall into which category.
10 And the chart here was intended to be illustrative of the
11 kind of analysis we would -- I think we'd have to go through
12 were we to follow this approach.

13 MR. SCHWARTZ: Thank you, Marty. Aubrey? We
14 don't have enough mikes, Aubrey, but in order to be
15 recorded, you're going to have to, I think, use this one.

16 MR. GODWIN: Aubrey Godwin from Arizona. A couple
17 of points I would observe about this; number one, your slide
18 reference to adequacy talks about protecting something, but
19 it doesn't seem to identify what that something is to be
20 protected. If it's not health and safety, or perhaps the
21 environment -- some of us will have a little difficulty
22 protecting the First National Bank, for example, so we need
23 to put that in there.

24 MR. SCHWARTZ: Oh, sure.

25 MR. GODWIN: Secondly, this whole process is

1 perceived along a line that I find a little disturbing
2 because there is account of thought. As I recall the
3 statute, it states that in order to sign an agreement, a
4 state has to be found adequate and compatible. But as I
5 also recall, it doesn't talk about compatibility after it's
6 become an Agreement State. I believe that the Office of
7 General Counsel has ruled that that's not a big issue, but
8 there are some people that feel strongly that that is,
9 indeed, an intentional legislative action that compatibility
10 was not required to be maintained necessarily to maintain
11 agreement. But clearly, the program had to always be
12 adequate to protect the public health and safety. And I'd
13 like your response to that, or one of you.

14 MR. MALSCH: Well, we've taken a fresh look at
15 that, and we believe that we're on pretty firm ground in
16 saying that we may suspend or revoke an Agreement State
17 Program, not only for inadequacy, but also for
18 incompatibility. And we've developed this kind of framework
19 with that in mind. But if you think about it, if you
20 clearly separate compatibility from adequacy, there ends up
21 being a kind of natural discipline on the compatibility
22 process. Because were we, in theory, let's say, to go after
23 some state and seek to revoke or suspend some Agreement
24 State Program for incompatibility, if we've done our
25 analysis right, and it's a pure incompatibility question,

1 what we're doing is seeking to revoke or suspend an adequate
2 state program.

3 And that's what forces, I think, the discipline on
4 the NRC, and I guess all of us here, because it forces us to
5 ask the question, what would there be that would cause the
6 NRC to seek suspension or revocation of a program which was
7 adequately protecting the public health and safety of the
8 citizens? And if you ask the question with that kind of a
9 framework, I think you end up with a different answer than
10 if you ask it in some sort of general sort of a sense,
11 mixing up compatibility and adequacy. Because when you mix
12 the two concepts up, it sounds a little easier to say, "We
13 don't like your program; it's incompatible."

14 If you separate the concepts, it forces us to
15 identify, with some precision, exactly what the overriding
16 national interest could possibly be that would cause us to
17 revoke an adequate program. And maybe there are not that
18 many. But clearly there are some that you can think of.
19 But the discipline may cause us to say that we've got to be
20 very careful about that.

21 MR. SCHWARTZ: Ed Bailey?

22 MR. BAILEY: Yeah, I notice -- it's okay. I know
23 this is only an example, but I don't know how one could
24 construe things that did not exist when either the AEA was
25 written, nor when the agreements were signed, as possibly

1 having been included in the thoughts of any of the people
2 involved in either of those processes. Misadministration,
3 you know, enforcement is written there, wrongdoer, there are
4 a number of them there that just simply do not fit the
5 commissioning standards. They didn't exist at the time.

6 And I don't see, you know, that those things could
7 therefore possibly have been included in a compatibility
8 issue worthy of revoking an agreement.

9 MR. SCHWARTZ: I understand what you're saying,
10 Ed. I may have overstated the case that all these elements
11 were included when a program was originally signed on. No,
12 they've evolved through the years.

13 MR. BAILEY: Okay.

14 MR. SCHWARTZ: And every -- but you might find
15 some new agreements that include some of those, because the
16 policy that caught up with the times. I recognize that.
17 But from the sense of being a list of what an adequate
18 program is, and maybe I should not frame it as this is the
19 list that is in place today that will -- that is going to be
20 the standard forever and ever. It's going to require rigor
21 and maybe a renegotiation of agreements. I mean, I think we
22 have to put that on the table. Marty, you might want to
23 deal with that.

24 But if we're going forward and rebaselining our
25 current license, current safety basis of every state

1 program, those are not exhaustive, but those are the things
2 that are considered important for "adequate" to protect the
3 public health and safety.

4 Let me point to one -- to the chart, and I don't
5 want to miss it. If you look at item 10, you don't see
6 anything in the chart on adequacy, and that gives you an
7 example of something that you might want to have in a
8 totally uniform program, that would be uniform to the NRC's
9 program, like the Uniform Manifest, like the STNP program,
10 as an example of things that could be considered under
11 compatibility but not part of the adequacy determination.
12 It's to draw some kind of a line that says, here are things
13 that are required for compatibility, but not considered as
14 part of the adequate program.

15 What added -- what are the things that you would
16 add to the program over and above adequacy for the national
17 perspective? And there are other things. Like I said, it's
18 not an exhaustive list.

19 MR. BAILEY: These are all rather strange
20 determinations of adequacy. Adequacy is how many people are
21 getting hurt and how many people are not getting hurt.
22 These things are -- these are figments of somebody's
23 imagination. What we're really talking about is are we
24 protecting people from unnecessary exposure, and are we
25 preventing contamination of the environment? Those are the

1 two, the only two things that I know that we're really
2 charged with doing. And those -- and if we're adequately
3 doing that, these things are completely unimportant.

4 MR. SCHWARTZ: Okay. Wayne?

5 MR. KERR: I guess we get to sit down over here,
6 right?

7 MR. SCHWARTZ: You can -- any way you like, pick
8 up the mike.

9 MR. KERR: Yeah, Wayne Kerr, Illinois -- I might
10 be here a while, so I better sit down.

11 [Laughter.]

12 MR. KERR: I think what Marty stated at the end
13 was the most cogent statement that, you know, how are you
14 going to handle it if you've got an adequate program and you
15 try to revoke based on one of these somewhat ephemeral
16 indicators? You know, I think when you put your reviewer,
17 of course now it's a management review board maybe, on the
18 witness stand and say, "What's going on out there that's
19 causing people to be hurt, or is there anybody releasing a
20 lot of radioactive material, anybody getting injured"?

21 And they say, "No, no, no."

22 "Well, we don't like the way they do this or we
23 don't like the way they do that," I think you'll have a hard
24 time convincing a judge.

25 My first inclination was to ask you guys what

1 you'd been smoking when you compiled this list, but I don't
2 know which one to point to. But let me take number five,
3 for example, on the flexibility column, even that's not
4 really very good, it says you can be more stringent. Why
5 can't we be more liberal? Just to cite the case of a couple
6 years ago on the tele-therapy inspection frequency when you
7 wanted to change it and told us to change it, and within
8 less than a year, I believe it was, you changed it back or
9 something. You know, it's a constantly moving target, and
10 it really doesn't make that much difference.

11 Sheldon, you've heard me say this, that I think
12 inspection priority systems are resource planning tools, and
13 it doesn't make much difference whether you inspect a
14 two-year licensee at 20 months, 24 months or 28 months. I
15 don't think you can tell the difference when you see the
16 results.

17 And I think even Carl Paperiello when he briefed
18 the commission last summer, said, "We're putting too much
19 emphasis on requiring our inspectors to meet quotas, we
20 ought to be putting it somewhere else." And I thought that
21 was a pretty good comment.

22 The only last comment that, Marty, I guess was
23 directed to you, if you say you want to renegotiate an
24 agreement, what if the state doesn't want to renegotiate?
25 How are you going to force them to renegotiate?

1 MR. SCHWARTZ: Okay, I'm not arguing your points.
2 I think they're well framed, and this is the kind of pros
3 and cons argument I think we need; the pros and cons
4 discussion that we need to get to the next step of defining
5 "compatibility."

6 Anybody else?

7 MR. MOBLEY: I just -- I want to make a comment,
8 Shelly.

9 MR. SCHWARTZ: Yes? Could you pass that on to
10 Mike Mobley?

11 MR. MOBLEY: If I've got to holler loud enough for
12 everybody to hear, surely they can hear too.

13 To me I would think that most of us agree that we
14 need to have adequate and compatible programs. I mean that
15 just sounds like that's mom and apple pie, you know, and
16 tooling down the highway in a Chevrolet.

17 MR. SCHWARTZ: Or a Buick.

18 MR. MOBLEY: So, well -- and of course, today most
19 of us don't have Chevrolets; we have Toyotas.

20 [Laughter.]

21 MR. SCHWARTZ: Made in Tennessee.

22 MR. MOBLEY: So, you know, times change and things
23 happen, or whatever, but I still think -- I mean, I'm
24 sitting here thinking, you know, how many times have we
25 talked about compatibility? And how far apart are we really

1 on this issue? Now you throw up a chart and we rip it to
2 shreds. And we throw up a chart and you rip it to shreds.
3 And we go back and forth. How far apart are we really on
4 this issue? Can we not say, "Look, we ought to have
5 adequate and compatible programs." What's adequate and
6 what's compatible, or what's adequacy and what's
7 compatibility? And then fill in the little blanks. And
8 maybe a few of us on one side are not satisfied on one
9 little blank, and a few of us on the other side aren't
10 satisfied on another little blank, but it just seems to me
11 like that's the only way we're going to get down to it.

12 Because my perspective is, I don't think that you
13 all can tell us what adequacy and compatibility is. Maybe
14 adequacy -- I don't think compatibility, though, from the
15 way I view it and the different level of understanding that
16 I know many people have of it. So all we got to do is
17 recognize that and say, "Okay, now let's decide what it is
18 we're going to live with."

19 MR. SCHWARTZ: That's what I'm asking, Mike, to
20 find it.

21 MR. MOBLEY: Well let's go for it then, and let's
22 decide what it is.

23 MR. SCHWARTZ: I'm serious, that's the reason for
24 that chart, to stimulate the thinking that says, we've
25 discussed it in ephemeral terms; we've discussed it in

1 qualitative terms; we've discussed it in a lot of different
2 ways, and we've discussed it as a matter of a partnership
3 and said, "We think we ought to work together in doing it."
4 But when you get down and you start defining the various
5 elements of what is an adequate program -- because in my
6 view, in order to step off into the area of compatibility,
7 you need to draw some kind of a line that says, "All right,
8 we're protecting the public health and safety, but what
9 extra is there"?

10 And this is an attempt to try and, you know,
11 clearly it's got a lot of stuff in there --

12 MR. MOBLEY: Yeah.

13 MR. SCHWARTZ: -- but I'm stimulating you guys,
14 and I hear you. I want to hear that.

15 MR. MOBLEY: I'm not just talking to you. I'm
16 talking to all of us in the room --

17 MR. SCHWARTZ: No, no, I'm --

18 MR. MOBLEY: -- I'm talking to myself.

19 MR. SCHWARTZ: -- the challenge is to everyone.

20 MR. MOBLEY: You know I didn't come out here with
21 a list of what I thought was adequate and compatible. I
22 have a certain thought in my mind as to what it is, which is
23 probably different than anybody else's in this room, but I
24 did come out here knowing that we need to get this settled.

25 MR. SCHWARTZ: Since we talked and did the first

1 study four years ago. Aubrey?

2 MR. GODWIN: I sent something like this to you all
3 earlier and didn't get a whole lot of consideration on it,
4 but I'm going to try it one more time. It seems to me that
5 nobody argues the necessity of having an adequate program.
6 And as a general rule, we're talking about -- and I would
7 use your definition here, a program with all of its
8 elements, including standards, organization and resources
9 necessary to maintain an acceptable level of protection of
10 the public health and safety. And that would mean the
11 acceptable level, I think would have to be sort of the basic
12 minimum level that's been established by the national
13 program. I don't have a whole lot of problem with that.

14 Compatibility, on the other hand, would have to do
15 with how close the regulations track the identical wording
16 and how close the program tracks the identical enforcement
17 issues. And I see those as two different things, but we all
18 would have to maintain some minimum level of adequacy with a
19 compatibility related to mostly the administrative end of
20 it. How closely is it tracking administratively?

21 MR. SCHWARTZ: Let me -- yeah --

22 MR. GODWIN: And I think that this would be, at
23 least, a start for discussion.

24 MR. SCHWARTZ: Aubrey, thank you. Yeah, I'd like
25 to have the discussion on whether compatibility should be

1 related only to regulations or, as you define it, I think,
2 or should it also have some programmatic elements included?

3 MR. GODWIN: I see both are included, myself.

4 MR. SCHWARTZ: Okay.

5 MR. GODWIN: For example, such programmatic things
6 as do we have to follow identically the re-inspection
7 frequency, particularly when, you know, you got say three
8 tele-therapy licenses, and they haven't had any citations
9 for the past ten years, for example.

10 MR. SCHWARTZ: Uh-huh.

11 MR. GODWIN: Where you might not be able to live
12 with that where you got a lot larger situation or situations
13 where you have a single licensee, you know, does it make --
14 how important is this to adopt a specific regulation when
15 you can do it by a license condition. There's a whole slew
16 of things that get into it, both administratively and
17 regulatory. And I think that this would at least start us
18 on some grounds of fruitful discussion. That's all -- you
19 know, I think we all want to talk about it and get it
20 settled.

21 MR. SCHWARTZ: This is another attempt at trying
22 to define it in real terms and not ephemeral terms.

23 MR. GODWIN: I think a part of the discussion on
24 adequacy has to do with somewhere defining it, you know,
25 what makes a particular regulation an adequacy level of

1 concern versus a compatibility level of concern? The easy
2 one would be the basic number one, you got a basic radiation
3 standard, you've got to be able to protect at a level at
4 least equal to the federal standards.

5 MR. SCHWARTZ: Uh-huh.

6 MR. GODWIN: Now I don't have any problem with
7 them going beyond that, that would be a compatibility issue
8 if you go beyond it.

9 MR. SCHWARTZ: Okay. Anyone else? I don't want
10 to dominate. Wayne? Paul?

11 MR. MERGES: Paul Merges from New York. I guess
12 if Williams Jennings Bryant were here he'd be asking whether
13 you're trying to crucify the agreement states on a cross of
14 gold. And what I'm trying to say is that you have to be
15 careful in a program -- we haven't entered into an agreement
16 like we do with EPA on a grant program, and we're not going
17 to be a bunch of bean counters on a grant program. And I
18 think that you have a problem in clarifying that with
19 Congress, that is, is an Agreement State Program where the
20 governor of the state entered into that agreement with the
21 NRC, and it is not a program where the state has gone
22 forward and obtained funds from you people in order to
23 implement that program, similar to EPA's programs on the
24 grants program.

25 And if you want to get into the grants program,

1 and Congress wants to get into the grants program, I think
2 the agreement states would be much more interested in
3 starting to receive some funds from NRC to implement the
4 Agreement State Program. Because I work in an agency where
5 EPA talks and NRC doesn't, simply because we have a lot of
6 funds coming into the agency from an EPA grant, several
7 different EPA grants programs. And I think you have to be
8 careful on that, Shelly.

9 MR. SCHWARTZ: Yeah, Paul, I understand what
10 you're saying, and it's focused even more, as you know,
11 because of the Synar hearings where we're asked, "What are
12 the attributes of an Agreement State Program that
13 demonstrates that they're adequate to protect the public
14 health and safety"? And we kept asking ourselves the same
15 question. And that feeds back into what you're saying, or
16 what Ed's saying, is that we are adequately protecting the
17 public health and safety because we don't have
18 overexposures, we don't have loss sources, we don't have
19 this, we don't have that, blah, blah, blah, so leave us
20 alone.

21 Well, that may not be good enough. People are
22 looking for more rigor, not only on a state-by-state basis,
23 but nationally. And that will also, I know, get us into
24 discussion of the Performance Evaluation Program that we
25 sent you copies on. But please, there's a cross-over, as we

1 know, in some of the discussions here and some of the
2 discussions that we'll have tomorrow on that.

3 MR. MERGES: Okay. The --

4 MR. SCHWARTZ: I understand what you're saying.

5 MR. MERGES: -- caution is, though, is that --

6 MR. SCHWARTZ: We have a responsibility --

7 MR. MERGES: I agree very much so on that.

8 MR. SCHWARTZ: Yeah.

9 MR. MERGES: The caution is that if we're going to
10 get into "more rigor," then there should be funding
11 associated with that "more rigor". Especially if it's going
12 to change the agreement that was originally entered into by
13 the states.

14 MR. SCHWARTZ: I understand what you're saying,
15 Paul.

16 Ed? Ed Bailey, state of --

17 MR. BAILEY: Holler --

18 MR. SCHWARTZ: Well the problem is he can't be on
19 the record.

20 [Laughter.]

21 MR. GODWIN: Does anybody want that to happen?

22 [Laughter.]

23 MR. SCHWARTZ: On second thought, Ed, just holler.

24 MR. BAILEY: I think, Shelly, we're all concerned
25 about adequacy and compatibility. I look at our last

1 review, where we were inadequate because we were -- we had
2 less inspections overdue than we do every month. So, in
3 effect, we were one month behind on inspections. So the
4 State of California is inadequate to protect the public
5 health and safety. We were incompatible because we didn't
6 have financial security regulations, yet we were able to
7 clean up a site with our own resources without that, and so
8 there was no injury, and yet we were found incompatible.

9 Those are things that are very difficult to
10 overcome. If anything I would, you know, it should be the
11 other way around. It should have pointed out, on the latter
12 one, that hey, we did a really good job because we handled a
13 contamination problem, we handled 1,500 milligrams of radium
14 and got rid of it, properly buried in the absence of a law
15 that would allow us to require financial security, but that
16 didn't come through at all.

17 When we start trying to say that programs are
18 incompatible we repeatedly run into the blockade that we
19 cannot have more stringent standards than NRC. And that's
20 just not going to fly, because we're already faced with
21 NESHAPS from EPA, which are going to make us adopt, in many
22 states, since we will have the NESHAPS program and the NRC
23 program in the same department, regulations that are going
24 to be stricter than NRC's.

25 So you've just got to back off on this

1 compatibility being identical. You've got to let states be
2 states.

3 MR. SCHWARTZ: So you're in the flexibility column
4 that says let states, you know, for certain areas, it's
5 important for states to have the flexibility to meet
6 whatever the local conditions are, or if you've got other
7 regulatory considerations?

8 MR. BAILEY: Yeah, but you've also got there, this
9 was mentioned earlier, it is only if they're more stringent
10 than. In some cases --

11 MR. SCHWARTZ: Wayne's made a very good point on
12 that.

13 MR. BAILEY: Yeah. You know things like Uniform
14 Manifest, it's a good thing to have, but now that we're all
15 going to be in compacts, it's really immaterial. We can't
16 ship our waste anywhere else, anyway.

17 MR. SCHWARTZ: We've got to let it come into forum
18 to say get on with it. I understand this past week they
19 passed another resolution to tell the NRC to get on with the
20 Uniform Manifest. Marty?

21 MR. MALSCH: Let me just say one thing that at
22 least I personally like about this framework is that it
23 enables you to look at the question, should the state be
24 allowed to be more stringent in a more careful way. For
25 example, in most respects you would think, except maybe in

1 some highly unusual circumstances, a state program which was
2 more stringent in some area than NRC would be a perfectly
3 adequate program. And so this kind of a process would raise
4 that as a pure compatibility question and demand us, if
5 we're going to insist on some degree of uniformity, to tell
6 you what is there so important about uniformity that would
7 make us insist that your regulations conform even though
8 they are protecting public health and safety in a perfectly
9 adequate fashion?

10 I also think we've got to be careful about how we
11 define items in these columns. This is not even a proposal,
12 this is just something to illustrate the kind of analysis
13 we'd be undergoing. But let's just take the first item,
14 which is "Basic Radiation Protection Standards." I mean,
15 could it possibly be that every single line and every single
16 word in the revised part 20 is necessary for adequate
17 protection of public health and safety? That seems kind of
18 far-fetched.

19 So we have to decide what exactly is in there
20 that's so important. Now, you know, one view would be the
21 only thing that's really important for adequacy, then, is
22 the revision to 100 millirem. Maybe everything else is a
23 matter of compatibility here. It may be completely up to
24 the states, I don't know.

25 Same thing about financial assurances for

1 decommissioning. You know what is there about that program
2 that would make us tell you all you've got to have something
3 exactly like the NRC's? And I mean, just thinking about
4 your example, our regulations have requirements for
5 licensees to provide financial assurance up front. But
6 thinking about it, the public health and safety doesn't care
7 whether the money -- may not care, I don't know -- whether
8 the money's provided by the licensees or some other source,
9 as long as the job gets done.

10 And so we might, for example, using this kind of a
11 discipline, look at our decommissioning regulations and say,
12 "Well, all right, the only thing that's really important
13 here is that there's some mechanism in place so the state is
14 assured that when it becomes time for decommissioning, the
15 money is there to do it in some reasonably timely fashion,
16 and in some reasonably adequate fashion."

17 So I think this kind of analysis is very helpful
18 in looking at these kinds of questions. I also just want to
19 point out that whether or not EPA will -- there has been no
20 final decision on whether EPA will rescind the NESHAPs based
21 upon the Clean Air Act finding. That's still a subject of
22 discussions between ourselves and EPA and the Materials
23 Program.

24 MR. SCHWARTZ: Well, they will not rescind them
25 for federal facilities which they are delegating to the

1 states and requiring that they write regulations. So you're
2 going to run headlong into a different protection standard.

3 MR. MALSCH: I'm aware of the problem we are
4 discussing with EPA, and all I'm saying is it's not clear to
5 me yet exactly how this is going to come out. I don't think
6 it's an absolutely foregone conclusion that subpart (i) for
7 nonpower reactors will not ever be rescinded. And I don't
8 think a final decision's been made.

9 MR. BAILEY: It won't matter once it's in our
10 state law.

11 MR. SCHWARTZ: Ruthie hasn't said anything yet,
12 and then Wayne.

13 MS. MCBURNEY: Ruth McBurney from Texas. Just
14 following along on the need for more flexibility in looking
15 at compatibility, we have an example of our last review --
16 of course as you all know, we have added additional training
17 and testing requirements for industrial radiographers, but
18 we did not have the quarterly audit rule of the individual
19 radiographers. We said that each licensee must audit
20 quarterly, but each radiographer only has to be audited
21 annually.

22 And I notice, as we'll find out tomorrow, with the
23 enhanced training and certification requirements that NRC is
24 proposing, they're also proposing to go to the annual audit.
25 The very reason that we had argued having the annual audit

1 in the beginning.

2 MR. SCHWARTZ: State innovation.

3 MS. MCBURNEY: Huh?

4 MR. SCHWARTZ: State innovation.

5 MS. MCBURNEY: Right.

6 MR. MOBLEY: You lost the battle but won the war,
7 is that how it works?

8 MR. SCHWARTZ: Yeah, exactly. And that's one of
9 the arguments that we've discussed many times, and that is
10 it is important to have state innovation. It is not
11 important to have cookie cutter and cloning programs. So
12 what is the middle ground? That's really the discussion,
13 where you want to step off. I promised Wayne next.

14 MR. MOBLEY: Oh, I'm sorry.

15 MR. SCHWARTZ: That's all right.

16 MR. KERR: Wayne Kerr, Illinois; just two
17 comments. One, basically on all regulations, or any of
18 them, I've almost come the conclusion there shouldn't be any
19 division one regulations. You know I went back and looked
20 at the paper you had in July that we discussed, and it
21 basically makes a case. And Marty even alluded to it a
22 minute ago, I think, that, you know, it really isn't
23 necessary to have each and every word identical, and if, you
24 know, if you stick to the more stringent, well you certainly
25 have adequate regulations. So I'm close to that position.

1 The other one is the staff training and
2 qualifications. You know, if you think we guys are tough to
3 deal with, wait until you get in a contest with 29 Agreement
4 State organizations run personnel matters and the unions
5 represent the employees in some of those. You know, I don't
6 think you want to touch that one.

7 MR. SCHWARTZ: That cuts across to tomorrow's
8 discussion too, Wayne, right?

9 MR. KERR: Yeah, I guess.

10 MR. SCHWARTZ: Michael?

11 MR. MOBLEY: I was just going to comment that the
12 thing I'm hearing here from Ruth and Ed and some others is
13 that there may not be -- it's the nitpicking that's the
14 issue, not so much the real concept or idea behind the
15 situation. I think many of us have been hit with this thing
16 of well, you don't have this, you know, you don't have a
17 decommissioning standard that requires your licensees to put
18 up the money.

19 In our case our decommissioning standard, which
20 was in place long before the NRC's, is questionable because
21 it closely follows the EPA standard which is out there which
22 allows corporate guarantees under certain circumstances, and
23 a lot -- it's a lot broader than the NRC's. And yet ours is
24 subject to question. We haven't had a determination one way
25 or the other on it yet; it's just been subject to question

1 for many, many years now.

2 I think that what that requires, what I'm hearing
3 is that that means that the NRC, in looking at this, is
4 going to have to set up some standards that people can look
5 at and evaluate, and it's just not you shall have this
6 exactly as we have it, but you shall have something that
7 addresses this concept and deals with it, and you go from
8 there. That does -- you know I'll acknowledge, that does
9 require a little bit more work on the part of the NRC
10 evaluators when they come in to evaluate the program and
11 review the program, and I understand that. But they have to
12 make some tough decisions anyway, and this is just a few
13 more.

14 And in fact, in many cases I think that they would
15 rather do that than have to sit there with their little
16 check marks and say, yes, it does; no, it doesn't; just on
17 the basis of pure wording or whatever that was written by
18 somebody that doesn't even understand what the question is.

19 MR. SCHWARTZ: I think what you've done, you've
20 described the flexibility category where we'd have a
21 compatibility, but you could -- just as long as you cover it
22 in your regulations adequately, then you could do
23 essentially what you want. You wouldn't have to clone the
24 NRC language. I think that's what I heard you say.

25 MR. MOBLEY: I think so. I guess I'm realizing,

1 though, that the fact it may be more stringent based on
2 local conditions, I don't know that that's the only
3 flexibility you want. You may want to have the flexibility
4 that Ed brought up here. He doesn't have an up-front, what
5 we call a financial assurance requirement, he just carries
6 it around in his own back pocket. I'm getting him, I'm
7 going to get you crossing the parking lot tonight.

8 [Laughter.]

9 MR. MOBLEY: But I mean that's different, but it
10 addresses the problem.

11 MR. SCHWARTZ: I guess what we're saying is
12 adequate to protect the public health and safety, but it's
13 okay to be different, if you want to put it that way.

14 MR. BAILEY: I think you could strike the
15 uniformity column from any point of discussion. I don't
16 know anybody that really wants to talk about that as much
17 as --

18 MR. MOBLEY: Well, but there's some things that
19 maybe go over there in uniformity. The 100 millirem, the --
20 what's another one? Well, there are a few of them.

21 MR. SCHWARTZ: But the basic standard --

22 MR. MOBLEY: And you lay them out there, and once
23 you've done that, you're done, you know. And then the rest
24 of it is okay, you're into flexible. How do you deal with
25 this? How do you address this?

1 MR. SCHWARTZ: Bob Kulikowski?

2 MR. KULIKOWSKI: Bob Kulikowski, New York City.

3 I've been interested in this issue for, I guess, a number of
4 years now. God, it's hard to say that. I remember my first
5 Agreement State meeting, which was in 1988, I guess, sort of
6 got emersed in it. And I sort of, in some respects, like
7 that chart, because it gives me something to -- I guess I
8 should probably turn around -- gives me something to use as
9 ammunition for my point of view.

10 I'd like to make a couple of points. One, having
11 read the Atomic Energy Act a couple of times, or at least
12 Section 274(b), there's one word that really strikes home in
13 that, and that is that the federal government relinquishes
14 its authority to the states. It doesn't delegate its
15 authority, it relinquishes it. I think that's an important
16 point, and it's not one that should be overlooked.

17 Secondly, as Shelly alluded to earlier, there's
18 not much fun in having a bunch of cookie cutter programs.
19 As you go around this room, and I've heard it, everyone
20 comes up and says, but this is my issue, this is my issue,
21 this is my issue and you're going to have as many people in
22 this room are going to have that many issues. And you're
23 right, having a cookie cutter program does stifle
24 innovation. I mean there are good things that come out of
25 states taking initiative and showing NRC how to do things,

1 or having more experience in a particular area.

2 And I'd like to put forth -- and as Mike Mobley
3 said, you know let's get off the dime and actually talk
4 about this -- I'd like to put forth a model. One to
5 propose, you know, sort of which, you know, looks at that
6 and incorporates a bunch of things that other people have
7 said today. Adequacy of a program is its basic fundamental
8 ability to protect public health and safety and the
9 environment, depending on where you are. So that a program
10 that does that, is adequate, should be deemed adequate.

11 If you look at all the rest of these things, and
12 Marty mentioned, you know, not all the language in part 20
13 is necessarily, you know, it doesn't have to be adopted as
14 long as we get the basic concepts. If we -- and this could
15 apply to regulations in other core areas as well, and I use
16 the word "core" because I think I just read that recently on
17 the plane coming out, there are some things that do need to
18 be identical. The 100 millirem, the occupational doses,
19 manifests, decommissioning criteria, for example, a number
20 of things that just make, that are sort of intuitively
21 obvious to be identical, i.e., uniform. Those can be deemed
22 matters of compatibility, if you will, in which the state
23 has to adopt them and use the adoption of those criteria,
24 and those criteria should be jointly decided upon by the
25 states and the commission -- and by the NRC. And make those

1 one of your programmatic indicators.

2 And we can maybe talk more about this tomorrow.

3 If those are not adopted, either as a regulation or as a
4 policy statement or procedure, or what have you, then that
5 ticks you off one -- you know, one check mark against you.
6 Because it seems sort of strange to me that if you have a
7 program that's adequate -- and I think it's a question, sort
8 of the same philosophy that Marty raised, if it comes before
9 some deciding body as to whether you're going to rescind a
10 program which is deemed adequate, but not compatible, I mean
11 it doesn't make a lot of sense.

12 Likewise, if you have a program that's adequate
13 how can it not be compatible? One element of it may be
14 missing, but I think you need to stop kowtowing, and believe
15 me, I appreciate this, because I just went through some city
16 council hearings this past Wednesday on our x-ray program,
17 politicians love to bean count. However, that's their
18 problem, not ours.

19 And I think what we have to do is educate them as
20 to what we do and a good job to do it in. And I was really
21 distressed. I was reading the Performance Evaluation
22 criteria, and a lot of them seem really fine and make a lot
23 of sense, until I got to the point where if you have one
24 excellent and one satisfactory and one this, you would --
25 then you're put into this pile. If it's something, you

1 know, two ticks in this column and one tick in this column,
2 I felt like I was in a Chinese restaurant. So I think we
3 really --

4 MR. SCHWARTZ: It may not be as palatable.

5 [Laughter.]

6 MR. KULIKOWSKI: Well I saw a short on the plane
7 coming out how bad the Chinese restaurants are for you. The
8 -- I think the overriding thing that we have to consider is
9 that we're all a bunch of professionals; we're all in the
10 radiation safety game, and some credence needs to be lent to
11 that, and we need to be able to make an informed
12 professional judgment.

13 So, just, to put it out, let's consider something
14 along the lines, if the program is adequate, it is, by
15 default, compatible, and that one indicator, if you will, or
16 one performance indicator, can be those elements which are
17 deemed to be uniform.

18 You know, as Aubrey said, if you have one licensee
19 in a state, who wants to go through a rule-making process
20 for that licensee, when you can address it by a license
21 condition?

22 MR. SCHWARTZ: Thank you, Bob. Kathy Allen, then
23 Aubrey.

24 MS. ALLEN: Kathy Allen, Illinois. Can you all
25 hear me?

1 I agree with what I have heard, I have a problem
2 with it, an inherent danger in the adequacy part. It
3 implies that if there is an incident somewhere in your
4 state, suddenly you were obviously not adequate to handle
5 that. So you have to look real carefully at the performance
6 indicators of what that program is. So now you're talking
7 number of staff to demonstrate adequacy, and those are very
8 difficult to tie down. I think you're going to have a fight
9 with each one of us because we all have our own opinion of
10 what we need to get the job done. So I just see it, that's
11 a big battle in itself.

12 The second point I was trying to make has to do
13 with Wayne's comment regarding zero division one
14 compatibility items. That would be kind of nice, but I
15 think I agree with Mike, we need a few. Probably not
16 definitions, maybe just concepts, five rem to a worker, and
17 we get to choose or we -- if we define what our occupational
18 employee is, that's great. So, I guess it's sort of we have
19 a new theme for this year, maybe, like a few good men, maybe
20 a few good division ones?

21 [Laughter.]

22 MR. SCHWARTZ: I'm sorry, what was that? If you
23 all can't read it, it says, "Only A Few Good Division Ones."
24 Thank you, Kathy.

25 Aubrey?

1 MR. GODWIN: It seems to me one of the things we
2 need to look at, also, is the impact on interstate commerce.
3 The Agreement State Program does not meet the constitutional
4 requirement to allow us to interfere in interstate commerce.
5 It was not an agreement, if you would, that's been
6 sanctioned by Congress for that purpose. Our compacts are,
7 the way we have regional compacts, but the Agreement State
8 Program, I don't think in any way would meet that criteria.

9 So it seems to me that, again, it gives you a
10 basis for looking at some of the programs, elements of the
11 program as to what should be deemed as adequate as opposed
12 to a compatibility issue. For example, we all really got to
13 work pretty close on the same basic radiation protection
14 standard. It's great to say, you know, that you want to cut
15 your public exposure down to two millirem per year, but I
16 don't think the commission would offer any protection from a
17 state if some guy walked in from out of state, say an
18 industrial radiographer, and expose the public at 50
19 millirem and then sued the state for trying to violate the
20 interstate commerce clause.

21 MR. BAILEY: There's no --

22 MR. GODWIN: There are other things that also seem
23 rather clear that might fall into this category, seal
24 sources and devices. We pretty well got to use a similar
25 criteria across the board on that. Misadministration on the

1 other hand, I'm not sure where that would fall into the
2 interstate commerce issue. Similarly, definitions may not
3 be that close into it. So I think we need to look at that
4 aspect of the problem as we look at the adequacy issue.

5 And I regret that we do not have more of the
6 senior commission folks here out of the office. I hope this
7 is not an indication that they've already decided the policy
8 and we're now trying to window dress it, follow it, because
9 I really think that we need to have a good, open
10 nonprejudicial procedure as we go forward in determining
11 this on development of policy.

12 MR. SCHWARTZ: Aubrey, in comment to your last
13 comment, while individual commissioners might have a bent
14 one way or the other, the commission has not taken this
15 issue yet. So there is no pre-disposition and there's no --
16 there should not be any belief that the lack of a
17 commissioner being here is any indication there's that
18 predisposition, no, not at all. They're just not available.

19 I see people going -- let's take a ten-minute
20 break.

21 [Brief recess.]

22 MR. SCHWARTZ: Okay, we're back in session. Steve
23 Collins?

24 MR. COLLINS: Steve Collins from Illinois. I
25 certainly do support, and I'm wearing my button to indicate

1 my support, that we only need a few good division one
2 compatibility items. I've listened to a lot of this
3 discussion, and I've read Section 274, interject a few
4 times, and you know I thought that for over 25 years NRC had
5 been making determinations on whether or not programs were
6 adequate. yet today, you want us to help you define it.
7 I think we'd be glad to do that.

8 And maybe the states, when they get together to
9 meet for an hour, or however long we get to meet, maybe they
10 can --

11 MR. SCHWARTZ: It may be all night.

12 MR. COLLINS: -- pick out a subset of that group
13 to work closely with someone that NRC might appoint to work
14 with that group to re up with what does "adequate" mean.
15 Then maybe Congress will agree with us. I mean, they're the
16 ones that originally put it in there. I'm not sure that
17 once we develop it that they would buy off on it. It seems
18 like that would be a necessary step, to have to check with
19 them. I'd rather us give them a suggestion, though, instead
20 of going to them first; don't get me wrong.

21 If a program is adequate, to me there ought to be
22 some performance base criteria that it means, and written
23 performance base, so that once it's found to be adequate,
24 that's the end of that determination. And compatibility, as
25 far as I know, the only place that needs to come in is in

1 our pledge to cooperate with one another. Compatibility,
2 when you look it up in any dictionary that you want to, just
3 doesn't say "uniformity" at all.

4 And it's been pointed out by several state people
5 here that a lot of these items on the list -- matter of fact
6 most every one of those items -- I think no one here thinks
7 uniformity is necessary except in its most basic elements.
8 But I don't think this great, big body that's convened here,
9 after most of us spending most of the day on a plane, is
10 going to come up with it this afternoon.

11 But I think the states and NRC will both need to
12 work together in some off-the-record sessions to throw out
13 some ideas and things they think about to try to work this
14 out.

15 MR. SCHWARTZ: Thank you, Steve; very positive
16 comments. I look forward to working -- you know, we'll have
17 somebody work with you on that. Michael?

18 MR. MOBLEY: I just want to follow up on something
19 that Steve said. I think he really hit on it there. I
20 think it's very important for us, at this point in time, to
21 really work this issue and resolve it. And Steve didn't say
22 it quite this way, but if we don't resolve the issue, if we
23 can't put something down there that we all can live with in
24 terms of what is adequate and what is compatible, you know
25 we may have somebody do that for us, and neither one of us

1 may like the way it's defined.

2 And I guess I would make the point, I believe if
3 we agree on what is adequate, I believe Congress will be
4 very, very happy. It's sort of like them revisiting the
5 low-level waste issue, you know, they don't need issues to
6 revisit.

7 MR. BAILEY: There's a major area where all 29 of
8 the states work that you don't, and that's in the x-ray
9 program. And I haven't done a state-by-state look at x-ray
10 regulations, but I bet that most of them look pretty darn
11 similar. And the reason they look similar is because they
12 were suggested state regs that we used to write them. And
13 unless there's compelling local reason or something, or
14 somebody comes up with a better way to do it they think,
15 you're generally going to take that easy way out. I would
16 think that we're probably as compatible in x-ray right now
17 today with no overriding federal requirements to be
18 compatible as we are in radioactive material, as defined by
19 NRC. I don't know. And if we're not, the intent's there.

20 MR. SCHWARTZ: I see a lot of heads nodding.

21 MR. MOBLEY: It's a good way of looking at it, if
22 you're right.

23 MR. SCHWARTZ: Dick Bangart?

24 MR. BANGART: Let me just talk about the schedule
25 that we're on to try to bring closure to the compatibility

1 debate; it's been mentioned it's been going on for years and
2 years. Shelly, as head of the working group, has before him
3 a task to provide a commission paper within about 30 days
4 that will have options identified in it for consideration,
5 with pros and cons of the options that are contained in that
6 paper. And this is an opportunity today and during this
7 meeting to get your views about the pros and cons of
8 approaches that obviously have come to our mind, and you can
9 probably see that this is one approach that has come to our
10 mind, however, how poorly or well it's received.

11 So we do definitely need to get from you, as
12 recent commentators have suggested, alternatives to this
13 approach, if you feel that it's not appropriate or if there
14 are better approaches to take. I would not focus, however,
15 on the examples in the columns here. They were put here for
16 effect, in a sense, to stimulate discussion. These are
17 clearly two ends of a spectrum, and we recognize that doing
18 that it does stimulate some discussion, and it certainly has
19 gotten a reaction.

20 Even an adequacy list, there's nothing close to
21 final about the adequacy list. If you think about some of
22 the other material that you've received on performance
23 indicators, what's going to be on an adequacy list is
24 probably going to look more like what's going to be in the
25 performance indicator list that's going to be used for both

1 regional reviews and Agreement State reviews.

2 So I would urge you to continue the discussions,
3 the debate, if you will, but to jot down your thoughts, pick
4 up the phone, and in the next week or two or three, but
5 quickly get to us your additional thoughts. Let me just put
6 in a vote or two for the uniformity column, though, and it
7 touches on some of the issues that have been identified.

8 What we saw from the Synar hearing is that beans
9 to count, however hard it is for us to accept that concept
10 that we're being graded on beans, to some and at least some
11 in Congress, appears to be the way to measure the
12 effectiveness of our control of our individual programs, and
13 collectively, the national programs. And what we need in
14 this approach to determination of adequacy and compatibility
15 is a way to demonstrate to those who are auditing us, who
16 are carrying out an oversight function, is a way to
17 demonstrate that we are in effective control of the program
18 both individually and collectively. And if counting beans
19 isn't the right way to do it, we need to identify some other
20 way, but a way that's convincing to those who choose to
21 doubt our effectiveness that indeed we're in control of the
22 programs that we're responsible for.

23 So I say that just to underscore the importance of
24 this. You're right that the debate is, I think, going to be
25 coming to an end next year, that's the task that the

1 commission has set for itself, and we're carrying out the
2 steps that they've outlined for us. But the objective now
3 is to have a new compatibility policy in place the first
4 half of next year. So join with us, continue to give us the
5 feedback, but at least there will be benefit, I think, in
6 ending the debate, and hopefully the debate will end with a
7 policy that may not be perfect, but it will be something
8 that, however flawed at that point in time, we can all
9 endorse and move forward and end the debate and apply our
10 energies elsewhere toward more meaningful matters perhaps.
11 Thanks.

12 MR. SCHWARTZ: Thanks, Dick. Wayne Kerr?

13 MR. KERR: Wayne Kerr. Dick and others, on the
14 bean counting issue, I'm not sure I know how each of you
15 from NRC personally feel. I kind of suspect that you think
16 it's unnecessary. I certainly think it's unnecessary. But
17 I hope that if that's what you end up with, that you tell
18 the Congress forthrightly that you're counting beans to show
19 them something or other, but that it's not necessary to
20 judge public health and safety.

21 MR. SCHWARTZ: Okay, fair comment. Thank you.
22 Anybody else at this point? I know my watch says that it's
23 8:30.

24 [Laughter.]

25 MR. SCHWARTZ: Could it be? I'd like to continue

1 till we've exhausted the comments here, but I said in the
2 beginning, this is the beginning of this discussion of this
3 meeting, and I know we will continue to have comments and
4 side meetings and group sessions, and I want that to
5 continue throughout the meeting. And Dick is right on this;
6 we are apace on developing this policy, and we've come at
7 you, I know, with a little side glance here based on some
8 other discussions that we've had, this is a new way of
9 looking at it.

10 You say that it's intuitively obvious, and I think
11 Bob used those words, well let's put our intuition down and
12 say this is what we consider, and use that as a stalking
13 horse for further discussions.

14 Just a second, Aubrey.

15 And I accept Mike and other's view that it is time
16 to sit down. We've intuitively, I think, also described
17 what was adequate. We're being challenged now in this
18 concept to say we need to know what compatibility is beyond
19 adequacy. So we have to go back and look at what we've been
20 doing in the past and accepting as adequate as the stepping
21 off point.

22 If that's not the right concept, then we need to
23 talk some more, and I know we will.

24 Aubrey? Sorry, Mike.

25 MR. GODWIN: Last time I looked at Arizona's

1 agreement it talked about both parties using their best
2 efforts to maintain compatibility. We need to explore how
3 that's going to work as a partnership arrangement. I
4 understand your difficulty if 29 states took off in
5 different directions who are you going to maintain
6 compatibility with. But I think we really need to look at
7 the fact that there are some things coming through in the
8 state programs, and I would use Texas as one of the
9 examples, of which perhaps you could use your best efforts
10 to become compatible with them. And that might be one way
11 to approach handling these situations, where you're going to
12 be adopting rules shortly, but in the meantime they are not
13 compatible with you, you might look at it as you weren't
14 compatible with them. And since this is a two-way
15 agreement, I think this is something that needs some
16 exploration also.

17 MR. SCHWARTZ: Point well taken.

18 Mike can you reach him? Ed?

19 MR. BAILEY: Shelly, I think I mentioned it a
20 couple, or at least one time before, and that is first, I
21 guess, a question, is NRC looking at the way other
22 federal/state programs, how the federal government evaluates
23 those state programs, and with some shame I would point to
24 EPA, to look at how maybe they evaluate some of their state
25 programs. ICFA has programs, FDA has programs, Department

1 of Agriculture has programs, and on and on and on. And I
2 think to a large extent we may be operating in a vacuum on
3 how you evaluate our programs. I think there could be some,
4 at least Congressionally acceptable methods being used by
5 these other agencies, or they would be being hammered on
6 also.

7 They may have the capability of having tighter
8 requirements, but I don't think any more than category one.
9 So they appear to be doing something right, at least in the
10 eyes of Congress.

11 MR. SCHWARTZ: Ed, I know there has been some look
12 at other federal/state programs, and I'll be the first to
13 admit it has not been an exhaustive review. But what we've
14 found is that this program is really unique in the federal
15 government, where the federal government does relinquish its
16 authority to the state. Relinquish; not delegate,
17 relinquish. And that's what makes it different.

18 MR. BAILEY: Yeah, but I see --

19 MR. SCHWARTZ: And no funds for running the
20 program either.

21 MR. BAILEY: Yeah, but I see in EPA a much wider
22 latitude in what a state program can do, where they've
23 simply delegated to the program. And then I see in NRC
24 where you have relinquished it and not provide any money.

25 MR. SCHWARTZ: That's interesting. You're making

1 a very interesting point, and I'd like to explore that some
2 more, I'd like to see the facts on that. Terry?

3 MR. FRAZEE: Terry Frazee for the state of
4 Washington. I think we might be falling into a trap here
5 with the use of your overhead and the "by default"
6 definitions of compatibility and adequacy. By default you
7 have defined "adequacy" as being uniformity and
8 "compatibility" as meaning flexibility.

9 MR. SCHWARTZ: No.

10 MR. FRAZEE: Well that's sort of the concept that
11 we've come up -- that -- anyway. that's what I'm saying, I
12 think it seems to be a trap to avoid. Someone earlier
13 mentioned, well throw out the uniformity column, and I think
14 I agree with that. Because in my definition of adequacy
15 that is, it's sort of like a baseline. You can't go below
16 this. If you go below it, it's inadequate. It's like the
17 100 millirem per year standard; okay, that's a standard.

18 MR. SCHWARTZ: We agree.

19 MR. FRAZEE: Okay, well that doesn't mean that
20 you're inadequate if you hold us to 95 millirem. That's
21 still adequate. It meets that basic minimum national
22 standard, if you will.

23 MR. SCHWARTZ: Uh-huh.

24 MR. FRAZEE: So I think that compatibility is more
25 nearly akin to flexibility, as you've gotten it written up

1 there -- or no, adequacy is more nearly akin to flexibility
2 as defined, it can be more stringent. And compatibility,
3 then, is perhaps we're thinking more in terms of absence of
4 conflict or non-interference, if you will. Things that
5 clash. Those are clearly not compatible. And so I just
6 want to point that out, and it's another way of looking at,
7 you know, the basic definition. And I agree, we do need to
8 get beyond this point, and maybe as a matter of -- throw out
9 a few ground rules and then get to work, basically in a
10 workshop fashion, to write down, and if you will, vote on
11 what things should be matters of compatibility and what
12 things are -- or well, no, I guess it's --

13 MR. SCHWARTZ: No.

14 MR. FRAZEE: -- adequacy. Just deal with
15 adequacy.

16 MR. SCHWARTZ: Define adequacy. Any other
17 comments for tonight?

18 [No response.]

19 I thank you all for your patience, your good
20 comments, your bad comments too. You're honest, but more
21 importantly the notion that everybody believes we ought to
22 sit down and once and for all face it, decide what it is and
23 tell everybody that's what we agree it is.

24 A couple of notes. I'll hold this for the formal
25 session. Anything else?

1 Thank you all. Have a good evening.

2 [Whereupon, at 5:40 p.m., the meeting was
3 recessed, to reconvene at 8:00 a.m., Monday, October 25,
4 1993.]

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