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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

Public Meeting on
SECY-78-48, ASSESSMENT OF ENVIRONMENTAL
IMPACTS OF URANIUM MILLS IN AGREEMENT STATE

Place - Washington, D. C.

Date - Thursday, 9 February 1978

Pages 1 - 41

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(202) 347-3700

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Washington, D.C. 20001

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 Public Meeting On

4 SECY-78-48, ASSESSMENT OF ENVIRONMENTAL

5 IMPACTS OF URANIUM MILLS IN AGREEMENT

6 STATE

7 - - - - -

8

9 Thursday, February 9, 1978

10 Commission Meeting Room

11 1717 H Street N.W.

12 Washington, D.C.

13 The Commission met, pursuant to notice, on the above-
14 entitled matter at 2:45 p.m.

15 PRESENT: Commissioners Hendrie, Gilinsky and Kennedy.

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1 CHAIRMAN HENDRIE: If we could come to order, we
2 will start this afternoon with a discussion of the matter of
3 assessment of environmental impacts of unanium mills in
4 agreement states.

5 I see the staff arrayed. Who will have the lead?

6 MR. DIRKS: I think Mr. Meyers will take the lead,
7 Mr. Chairman.

8 I think we might mention that this is one of a
9 series of items that we will be talking about over the next
10 several months, dealing with uranium mill tailings. This
11 one deals particularly with the environmental impact statement
12 procedures.

13 Within two weeks or so we will be gathering the
14 front end of the uranium mill tailings question in the S-3
15 table. Then in August we will be coming down with the
16 generic environmental impact statement on uranium milling,
17 the statement itself.

18 So I think this is the beginning of a string of
19 these things you will be seeing.

20 CHAIRMAN HENDRIE: Very good. Shelly, do you
21 want to go ahead?

22 MR. MEYERS: The subject at hand is whether or not
23 to recommend a course of action with regard to providing
24 NRC assistance to the agreement states for the preparation
25 of environmental assessments for uranium mills.

1 You probably have a January 26 paper that was
2 prepared that outlines all the background materials, the
3 various alternatives and the recommendations.

4 COMMISSIONER GILINSKY: Let's see, you are already
5 choosing one of the alternatives there, aren't you? Or
6 phrasing it in terms of one of the alternatives.

7 MR. MEYERS: In there?

8 COMMISSIONER GILINSKY: When you said whether or
9 not to supply assistance to the states?

10 MR. MEYERS: Right.

11 COMMISSIONER GILINSKY: I mean that is one of the
12 alternatives. There are other alternatives.

13 MR. MEYERS: Right. There are three alternatives.

14 COMMISSIONER GILINSKY: Dealing with the question
15 of the environmental statement on mills in --

16 MR. MEYERS: In the agreement states, that is
17 true.

18 COMMISSIONER GILINSKY: Okay.

19 MR. MEYERS: THere is a recommendation in the
20 paper, that is why I did it that way.

21 COMMISSIONER GILINSKY: I know that is why you
22 did it that way.

23 MR. MEYERS: I will be delighted to discuss the
24 recommendations when we get to them.

25 Just for your information, and I am sure you know

1 this, the Natural Resources Defense Council filed a suit
2 with the State of New Mexico against the State and NRC,
3 on two counts: One, whether or not NRC should write an
4 impact statement on the licensing of the mill there, or whether
5 or not the State of New Mexico should prepare an impact
6 statement as a matter of compatibility under Section 274 of
7 the Act.

8 In both of these cases ELD says the answer is no,
9 and there is an attached legal opinion, I believe.

10 Right now the current status of environmental
11 assessments in the various agreement states is variable.

12 Colorado and New Mexico require the applicants
13 to submit about the same kind of information we require from
14 applicants.

15 However, they do take that information and convert
16 it into an independent impact statement, nor do they provide
17 a written assessment of that particular document.

18 Texas and Washington require some environmental
19 information to be submitted as part of the application, not a
20 separate document.

21 The State of Arizona has no requirements at all.
22 There are differences between the environmental reports that
23 are prepared and submitted to the state governments and the
24 impact statements we do as a matter of course before we license
25 a uranium mill.

1 I mentioned earlier the states do not prepare an
2 independent assessment of the environmental report submitted
3 by the Applicant. They do not prepare an independent statement
4 either.

5 Now while all states have procedures for public
6 involvement, they are variable. None have regulations which
7 would prohibit the start of construction before the environmental
8 report is completed. So it is possible, while they are
9 going through the review process, to start construction of
10 the site, which we don't allow.

11 In order to discuss the various issues, we held
12 a meeting in conjunction with the Office of State Programs
13 last November 17 and 18 in Colorado to get a feel from
14 the various agreement states, and non-agreement states as
15 to what they felt would be a good course of action.

16 Most of the states felt they are doing an
17 adequate job. However, they all felt that some NRC assistance
18 would be desirable.

19 COMMISSIONER KENNEDY: Did they specify the
20 kind of assistance, or are we going to get to that later?

21 MR. MEYERS: Well, what they would like would be
22 for us to just send money, mostly.

23 COMMISSIONER KENNEDY: That sounds like the way
24 I used to write my mother. She always wrote something which
25 made me re-think the problem.

1 MR. MEYERS: Maybe they will, too.

2 CHAIRMAN HENDRIE: Ever since the Phoeneticians
3 invented money, there has been a clear answer to the question
4 "What can I do for you?"

5 MR. MEYERS: Yes, send more.

6 Another point they made was that this desired
7 NRC assistance should not impede the state licensing process.

8 Some states felt that the Federal EIS process was
9 unduly burdensome, and there are many people who believe that
10 as well.

11 As a matter of fact, the state legislatures of New
12 Mexico, Texas and Colorado have considered legislation to
13 develop state environmental policy acts and it was rejected
14 in those three states.

15 Incidentally, New Mexico and Colorado have the
16 lion's share of the agreement state mills.

17 The states all felt strongly that the licensing
18 of mills should remain with the states in those agreement
19 states that have it. They were uniformly opposed to NRC
20 recapturing such authority. All of the states did, however,
21 agree that NRC assistance would improve the quality of their
22 environmental reviews. They also felt it would improve the
23 public understanding of the consequences of the various
24 licensing actions. They also felt that by doing the kind of
25 environmental review we are going to recommend, it would reduce

1 the unanticipated problems that result after the start of a
2 mill operation, and also, as an ancillary benefit in their
3 minds, it would also reduce the prospects of litigation.

4 Now we have identified in the paper three alterna-
5 tive approaches, one of which is the setatus quo, do nothing.
6 The second -alternative is reassertion of NRC authority through
7 legislation with a provision that we would later redelegate
8 to the states, but under prescribed circumstances, such as an
9 adequate review process, agreeing to do environmental impact
10 statements, perhaps, things of that nature.

11 The last item is to provide technical assistance
12 to the states --

13 COMMISSIONER GILINSKY: Wait a minute. Under that
14 option (B) you also discuss the possibility of recapture of
15 authority without legislation, regarding it as being
16 theoretically possible, but you don't seem to think much of it.

17 MR. MEYERS: Yes. The reason for that is
18 under the existing law, if we made a determination that they
19 were not adequately doing their job in protecting the health
20 and safety of the citizenry of the state, we could recapture
21 it through that.

22 COMMISSIONER KENNEDY: That is the only way, without
23 new legislation.

24 MR. MEYERS: Right. Now elsewhere in the paper we
25 say that we would have a very very difficult case proving that.

1 COMMISSIONER GILINSKY: Let's see. There is a
2 memorandum from the General Council, which I haven't read
3 yet, that speaks to that.

4 MR. EILPRIN: We agree that the touchstone is the
5 public health and safety, and that the only ground for
6 recapturing authority and terminating an agreement is a
7 finding that the state is not adequately protecting the public
8 health and safety.

9 MR. MEYERS: We are really not talking about that
10 kind of situation. From what I have been able to see, and
11 from what I have been told by others, they are doing the
12 kind of job that does protect the health and safety.

13 Now we are talking about the kind of public
14 information that comes out in forms --

15 COMMISSIONER KENNEDY: Excuse me. Is that the
16 charge of the state agency, essentially the charge of the
17 state agencies that are involved, to protect the public health
18 and safety?

19 MR. MEYERS: You mean with regard to the mills?

20 COMMISSIONER KENNEDY: Yes.

21 MR. MEYERS: As far as I know, yes.

22 COMMISSIONER KENNEDY: I wasn't sure what --

23 MR. RYAN: The agreements state -- the program,
24 for instance, in the State of Colorado, proceeds under the
25 Colorado Health Department, Dr. Robbins.

1 COMMISSIONER KENNEDY: And the agreement is
2 programmed -- by accepting agreement state status, they assume
3 the responsibility for protecting the public health and
4 safety?

5 MR. MEYRS: Right, radiological, yes.

6 Getting on, the third option is to provide
7 technical assistance to the states, but have it conditioned.
8 This would be an agreement. We would do something for them;
9 in turn, they would do something that we feel is important:
10 Develop written assessment of the Applicant's environmental
11 report; expand public participation; and provide for
12 preventing any long-term commitments being made before this
13 environmental review process is complete. In other words,
14 some way or another avoid the start of construction until
15 we have completed the environmental review.

16 An important part and parcel of that package would
17 be to encourage the states to develop legislation to set
18 up some sort of fee system, so they can get some revenues
19 coming in, so we can pull out of this kind of exercise in
20 the future.

21 MR. RYAN: In the case of Colorado, Mr. Chairman,
22 we discussed this matter at the time we talked of the
23 draft agreement, and it is the intention of the Colorado
24 Health Department, and other state agencies, to develop such
25 licensing legislation.

1 Obviously we have no power to coerce such a thing.
2 But the Colorado Health Department has informed us that it
3 is the intention of the administration of Governor Lamb to
4 develop such legislation and recommend it to the legislature.

5 MR. MEYERS: Those then are the alternatives that
6 we have identified, and as you can see from the paper, the
7 Staff does recommend that the third option, which is to
8 provide technical assistance in a limited way, -- by limited
9 way, I mean it will have a beginning and an end; it is
10 not a continuing program that will go on forever. We are
11 planning a three-year effort, at the end of which time we will
12 assess how the program went, did it do what we intended,
13 it is worthwhile, did the states develop internal mechanisms
14 for getting revenues, so that they can continue the program,
15 et cetera.

16 So, summing it all up, we feel that rather than --
17 one of the reasons we rejected the second option, which in
18 my view is the most decisive and the best way to go, is that
19 we feel the states would probably oppose that. In other
20 words, it would be difficult to get support for it in the
21 states, and perhaps in the Congress as well.

22 And even if you were able to do it, it would take
23 several years.

24 The problem is that many of the mills that are
25 going to be licensed in the agreement states are going to be

1 coming up in the next couple of years. So even if you
2 were successfull in getting that legislation through the mill,
3 it would probably be after you had gone through this exercise
4 of licensing ten or fifteen mills.

5 We feel that it is important to avoid the kind of
6 bickering back and forth as to what is the right thing, when
7 we know we can provide the kind of assistance that will focus
8 in on the site problems, the mill tailing problems, the
9 radiological effect problems, essentially focused impact
10 analyses, and do it quickly.

11 COMMISSIONER KENNEDY: How would you go about
12 providing this assistance? What would you do?

13 MR.MEYERS: We would most likely do it through
14 contractors. Let me give you an example.

15 We have one such exercise underway right now that
16 is a little cleaner, and that is the Pitch Project in
17 Colorado. It is a project that is being worked on on Forest
18 Service lands, so that the Forest Service is obligated to
19 prepare an impact statement. What we are doing is assiting
20 the Forest Service in preparing their impact statement.
21 It is taking almost a manyear of effort on our part and
22 \$150,000. But that work is being done by a national lab,
23 Oak Ridge.

24 COMMISSIONER KENNEDY: That is something I was
25 going to get to. It is possible to assist the states to

1 use the national labs to help them in connection with
2 environmental statements, exactly as we do.

3 MR. MEYERS: Let me tell you how it would work.
4 If the Commission approves this concept, what we would do would
5 be to find out in more specific detail the kind of action the
6 state anticipates in the next two years.

7 On each one we would assign an individual and they
8 would assign an individual. We don't want to get into a position
9 of ramming something down their throats that they don't want.
10 We would try to find out from them what they perceive their
11 problems to be in the areas of concern to us, such as siting,
12 tailings management, radiological health, and agree with them
13 on the work that has to be done.

14 We would then work with the national lab. In
15 other words, no dealings between the state and the national
16 lab.

17 COMMISSIONER GILINSKY: Why the national lab?

18 MR. MEYERS: Or a contractor. The point is we
19 would be dealing with the contractor, not the state.

20 COMMISSIONER KENNEDY: I only raised the national
21 lab, because we used them.

22 MR. MEYERS: It doesn't have to be a national lab.
23 It could be an industrial contractor.

24 The point is we don't want to confuse whoever is
25 doing the work by getting directions from the state and us.

1 COMMISSIONER GILINSKY: What are we trying to do
2 here? What is the objective?

3 MR. MEYERS: THe objective is to provide the kind
4 of independent analysis of environmental reports that we
5 do, which they do not do now. They get an application in
6 and that is it.

7 COMMISSIONER GILINSKY: Are they doing an inadequate
8 job of regulating the mills?

9 MR. MEYERS: YOu can't say they are doing an
10 inaequate job of regulating the mills. It is similar to the
11 cases that were involved in the National Environmental Policy
12 Act in the early days, where an application with an
13 environmental report came in, and the Federal agencies merely
14 took it and said this is our environmental impact statement,
15 without doing an independent analysis.

16 They were shot down in court. The Judge said
17 you have got to go through that and make sure it is like you
18 would do it if you had written it from scratch.

19 So it is that kind of independent analysis we
20 would provide through a contractor of an applicant's report,
21 and further, make sure that there is adequate public
22 participation, which is variable in the states now, in part
23 because the people who are interested can't really come to
24 grasp on a particular document that represents the state's
25 point of view. They have what the Applicant submitted.

1 COMMISSIONER KENNEDY: But they do have, as I
2 understand it, access to comments of Federal agencies?

3 MR. MEYERS: They have access to everything that
4 is available. In other words, the states do have administrative
5 procedures that allow the public to get involved in their
6 processes. But the information has to be there. And what
7 is lacking is this independent analysis of an applicant's
8 work, which may be self-serving.

9 COMMISSIONER GILINSKY: What you are saying on the
10 onehand is that the states are doing a pretty good job.
11 But on the other hand we ought to be helping them do more.
12 It soundsd a little bit like we are trying to cope with
13 technological unemployment here.

14 MR. MEYERS: NO. What I said was it would be
15 difficult for us to make the case that they are not doing an
16 adequate job in protecting the health and safety of the
17 citizens from radiation. They may be doing that okay.

18 COMMISSIONER GILINSKY: But then you are saying
19 these statements really aren't relevant to the protection of
20 the public?

21 MR. MEYERS: Yes, they are. I think the same
22 analogy exists at the national level between Federal actions
23 with NEPA and Federal actions without NEPA.statements. We
24 assume Federal actions after passage of NEPA have been more
25 balanced with the environment.

1 COMMISSIONER GILINSKY: Well, that's right.
2 Isn't the Congress setting a higher standard for Federal
3 decision-making, and the decision-making in this area, at
4 least in the agreement states, if I understand you correctly,
5 doesn't measure up to that standard?

6 MR. MEYERS: I would say that is correct.

7 COMMISSIONER GILINSKY: And it seems to me that
8 the touchstone of all of this ought to be to bring the standard
9 into some -- have the same standard, whether the mill would
10 be regulated by the Federal Government, or by state govern-
11 ments. You know, that's what we ought to be trying to do.

12 MR. MEYERS: I would agree.

13 COMMISSIONER KENNEDY: Some agreed minimum standard,
14 at least.

15 MR. MEYERS: The way to do that would be that
16 second option.

17 COMMISSIONER GILINSKY: Whether the exact form has
18 to be identical is another matter. But it seems to me it
19 ought to be substantially identical in some sense. I mean
20 substantially the same, because that is important for the
21 health and safety of the public, in one way or another.

22 MR. MEYERS: Agreed.

23 COMMISSIONER GILINSKY: Now what you are suggesting
24 is offering a kind of free consulting service.

25 MR. MEYERS: I guess that is a different way of
 putting it.

1 COMMISSIONER GILINSKY: That would go part way toward
2 meeting these problems, but it is just not clear what use
3 will be made of it.

4 MR. MEYERS: By the states?

5 COMMISSIONER GILINSKY: Yes.

6 MR. MEYERS: Well, clearly part of any agreement
7 we would work out with them would oblige them to factor into
8 their licensing process the information that was developed.

9 Remember, we are not talking about doing a
10 complete environmental impact statement. We are focusing in
11 on the siting, focusing in on the management of tailings,
12 and, you know, without accusing anybody of anything.

13 Unless you go through a complete analysis of the
14 various sites -- when I say you, I mean the state -- you
15 pretty much accept what comes in with the application. And
16 it is not all clear that the applicant will do the same kind
17 of analysis with regard to alternative sites, with regard to
18 different methods of stabilization of the tails, that the
19 state or governmental body would do.

20 That is why, I think, it is important to have this
21 kind of independent analysis so one can double check that which
22 is done by the applicants.

23 MR. RYAN: It is not the kind of analysis that
24 would simple be put on a shelf, or in a volume to be filed
25 and forgotten, because in the draft agreement Colorado would

1 agree, for instance, to use that analysis as part of its
2 normal licensing process.

3 COMMISSIONER GILINSKY: In other words, they
4 are basically agreeing to use this to put together your
5 environmental statement or some equivalent thereof?

6 MR. MEYERS: An independent document that --we
7 characterize it --

8 COMMISSIONER KENNEDY: And to use that statement
9 in their licensing process.

10 MR. RYAN: Right, as part of it. It is characterized
11 in the draft agreement as an environmental report. And
12 the stipulation is that this report, when delivered, would be
13 used as a decision-making tool in the licensing process, by
14 the licensing authorities.

15 MR. DIRKS: It would be subject to public review
16 and comment and agency review and comment.

17 MR. RYAN: That is another aspect of it. Part
18 of the undertaking is an agreement by the state, and
19 again in the case of the Colorado draft agreement, that the
20 state, through its normal administrative processes, will
21 see to it that the environmental report is given exposure
22 to the public.

23 MR. MEYERS: One last point: There are resource
24 requirements that go along with this. In other words, if
25 you approve this, we would need additional money and people

1 to follow through to the extent of the anticipated 15
2 actions over the next two years.

3 Right now we have a program during fiscal
4 years '78 and '79, enough resources to cover about five of
5 those fifteen.

6 CHAIRMAN HENDRIE: Let's see, this is proposed
7 15 actions over a three-year --

8 MR. MEYERS: Two years, '78 and '79.

9 CHAIRMAN HENDRIE: FY?

10 MR. MEYERS: Right.

11 MR. DIRKS: You will need two manyears and \$250,000
12 extra in '78, and three manyears and \$550,000 in fiscal
13 '79.

14 CHAIRMAN HENDRIE: The '78 supplement was what?

15 MR. DIRKS: We never budgeted for this.

16 MR. MEYERS: We would need two manyears and
17 \$250,000 for '78, and three manyears and \$550,000 for '79.

18 MR. RYAN: There is another point I would like
19 to make, Mr. Chairman. Mr. Meyers said at the beginning that
20 the preferred solution or the ideal solution might be to
21 recapture control of uranium mills, and regulation of uranium
22 mills for the Federal Government.

23 I don't know that I necessarily agree that that
24 is the ideal solution. As a matter of fact, I don't think
25 we have sufficient information at our disposal at this time

1 on which to make a value judgment of that sort.

2 I will suggest, however, that at some future
3 time it may be desirable to do that, in the interest of
4 uniformity, as Commissioner Gilinsky has suggested, in the
5 interest of taking care of a national problem with a national
6 solution.

7 I do think that the adoption by the Commission of
8 a cooperative agreement with the State of Colorado, which is the
9 specimen agreement, and the authority and delegating the
10 authority to the staff to enter into similar agreements with
11 other agreement states would have another benefit to the
12 Commission, indeed to the country, in addressing this
13 long-term problem. And that is it would supply us with
14 information on the basis of which we could make a more
15 informed judgment at some future time.

16 As Mr. Meyers pointed out at the outset, what we
17 are talking about is not an open-ended arrangement here. We
18 are talking about an agreement which has a date certain for
19 termination. And three years is the term that we hit upon,
20 in the draft agreement.

21 A number of other things will happen in the
22 meantime. We will have in hand in the summer of this year
23 the draft generic environmental impact statement on uranium
24 mills and tailings. We will have exposed that to public
25 scrutiny and asked interested parties for comments and

1 so on in the summer and fall of this year, and probably we will
2 have in hand this time next year a final environmental
3 impact statement.

4 I think that if we were to propose legislation
5 at some future time asking the Congress for authority to
6 resume control over mills and tailings in agreement states,
7 we would have a better information base a year and a half or
8 two years or three years hence than we have at this point.

9 We can, I think, learn a good deal from the operation
10 of such proposed agreements with the states, and indeed that
11 is one of the provisions in the draft agreement, that is, that
12 the state will share information which they derive from
13 their licensing process with us and we with them.

14 COMMISSIONER GILINSKY: We already license
15 some of them?

16 MR. RYAN: We do indeed, in non-agreement states.

17 CHAIRMAN HENDRIE: About what fraction of the
18 population of such mills?

19 MR. EILPRIN: It is close to 50-50.

20 MR. RYAN: I think so, yes. It is 8 and 8, isn't
21 it? One extra.

22 MR. CUNNINGHAM: Nine and 11, I believe. 11 in the
23 non-agreement states, and 9 in the agreement states.

24 COMMISSIONER GILINSKY: This agreement with
25 Colorado, is that the model agreement? Will other agreements

1 be essentially identical to that?

2 MR. RYAN: Yes, it would be a model agreement.

3 Obviously I think it would be worked out to meet the peculiar
4 needs of the state involved, and in each case obviously it
5 would be initialled, as this one was, subject to Commission
6 ratification and approval.

7 But basically those are the points which we feel
8 ought to be contained in there. The main point that this
9 instrument which is provided to an agreement state would
10 not be a hollow document to be filed and forgotten, but rather
11 an operative instrument to be used by the agreement state
12 agencies in the course of their licensing process.

13 The notion of the states establishing licensing fees
14 for mills within their borders also, I think, is a thing that
15 we would urge on other states if we were authorized to negotiate
16 with other states.

17 I think, also, if I may depart from the specifics
18 of uranium mills, I think it is an opportunity for the
19 Commission to reach out and to take advantage of the provisions
20 of Section 274(i), which authorize it to enter into
21 agreements with states or groups of states to perform
22 inspections or other functions on a cooperative basis as the
23 Commission deems appropriate.

24 It is an opportunity to extend to the states our
25 expertise in matters of this sort, and in other matters,
indeed where it exists and where it is firmly established,

1 and to do what the statutory language says, cooperate, enter
2 into cooperative agreements, to make Federalism into a
3 more meaningful and shared experience.

4 I think it would be innovative and desirable to
5 move out in this direction, and to let the states know that
6 we are interested in doing that, that it is not empty talk
7 about partnerships and help and cooperation, but rather a
8 genuine feeling that we have something to share and they have
9 something to share with us, and that we ought to get along
10 and do the public's business as cooperatively as we possibly
11 can.

12 CHAIRMAN HENDRIE: Could I hear from ELD on some
13 of the questions of the underlying authority for us to
14 provide this kind of assistance?

15 MR. MALSCH: Well, we have taken a careful look
16 at this. There are a couple of legal issues, which, the
17 way the recommendation in the paper here has been formulated
18 and the way the agreement has been drafted, these issues
19 are avoided for the time being.

20 I think we have concluded that the proposal here
21 is within the Commission's present statutory authority.

22 Now on the other hand, it is not something that we
23 would maintain the Commission is obligated to do. It is
24 discretionary authority by the Commission.

25 In that regard, it is precedent setting in the sense

1 that if I were a state official and saw this proposal adopted,
2 I would be very much interested in exploring with the
3 Commission the possibility of proper arrangements with respect
4 to other kinds of licensing, like waste burial grounds,
5 or maybe pharmaceutical manufacturing concerns. This is
6 something where we are really getting into a new area, where
7 the Commission never before rendered this kind of technical
8 assistance in aid of a national agreement state licensing
9 process.

10 Incidentally, there is one qualification. We
11 have a disucssion of the legal authority to do this in
12 Attachment D to the paper. And there is a caviat in the
13 bottom of the paper that talks about problems with regard to
14 the open-ended nature of the obligation. There is no problem
15 with that, really. The staff is in agreement that when it
16 came down to actually executing the agreement, it would
17 have to be subject to available appropriations.

18 So that is a caviat, but it is not a difference
19 of opinion in any respect with regard to this particular agreement.

20 MR. EILPRIN: This could be incorporated into
21 the agreement.

22 MR. MALSCH: Very easily.

23 MR. RYAN: I don't think Colorado would object
24 to that, or any other state.

25 CHAIRMAN HENDRIE: Any comments at the moment?

1 If you didn't have anything right at the moment,
2 I was going to ask OPE if they wanted to comment.

3 MR. PEDERSON: I have just a few comments, Mr.
4 Chairman.

5 I think I largely subscribe to what I heard Bob
6 Ryan saying here. I think my preferred course would be
7 to either reassert authority, or to have the states regulate
8 these in conformance with some kind of clear-cut Federal
9 standards, if I felt that were feasible in the short run.
10 I don't think it is. I think we have got too many unanswered
11 questions right now. I think we have got a number of irons
12 in the fire with regard to GEIS, with regard to clarification
13 of our authority vis a vis other Federal agencies in this
14 regard. The New England Coalition petitions will shortly
15 be before us in terms of the calculating of the appropriate
16 time periods for long-term dose, and so forth.

17 I think we are simply going to be in a better
18 position, a short way down the road, to provide those kinds of
19 standards, not only for the states but for ourselves.
20 I think there is an implication here that we are doing a
21 great job and have all of the questions answered. That is
22 simply not true for our own reviews.

23 My concern would be it be made very clear that
24 we see this assistance as an interim step towards something
25 else. In that regard I have some concern for the precedential

1 aspects that Marty raised. I think if we present it as an
2 interim step to a very difficult and complex problem, that
3 has in large part been left us with as a result of perhaps
4 mistakes that were made in the past, whatever.

5 So I would recommend that the Commission accept
6 the staff's recommendation of alternative C, that they
7 clearly do so in recognition that it is an interim step,
8 that, quite frankly, to urge the staff to be about the work
9 of getting these other papers and issues clarified, many of
10 which are already the subject of upcoming things, as Bill has
11 mentioned. And to recognize that the long-term solution here
12 is not this kind of assistance, I don't believe, but some
13 standards which the states can in one way or another do their
14 job in conformance with. And if they can't or won't, that
15 would of course provide us the basis for us reasserting our
16 authority and regulating in conformance with those ourselves.

17 MR. MALSCH: I think that all of these really
18 long-term difficult issues are all going to be discussed in
19 detail in the generic impact statement that is forthcoming.

20 MR. DIRKS: Including the issue of standards.

21 MR. MALSCH: Right, yes.

22 MR. PEDERSON: Our experience with draft GEIS's in the
23 past has been that we have tended in some cases to expect
24 too much of them. What we had gotten was not everything we
25 had hoped. So I don't want to pin our whole hopes on this

1 draft GEIS.

2 MR. MEYERS: This is specifically aimed at better
3 ways to manage mill tailings.

4 MR. PEDERSON: By the time it goes out for
5 comment and we are able to finalize and make policy on the
6 basis of it, we are really probably into '79, I expect.

7 MR. MEYERS: I think so. This one specifically
8 is the "be-all and end-all."

9 CHAIRMAN HENDRIE: What is the intersection with
10 that litigation?

11 MR. EILPRIN: First, I think we also favor this
12 technical assistance agreement as a sensible way of going
13 about this problem.

14 I think that the alternative of re-asserting
15 authority at this point is just not feasible, because I
16 don't think we could make any finding at this time that the
17 states are not doing an adequate job.

18 So that I don't consider it very much of a realistic
19 alternative, and we would just create problems and exacerbate
20 the feelings between the states and ourselves.

21 The other idea of sort of imposing on the states
22 specific requirements to do environmental impact statements,
23 I think there are serious legal difficulties with that.

24 Basically that is because this is primarily a public health
25 and safety law, and I think that has to be the touchstone,

1 and I think we would first have to demonstrate that whatever
2 we did is very very closely tied to public health and safety.

3 So I think instead of a generalized regulation
4 like that, I think a cooperative agreement such as that
5 suggested here is a good idea, and a better way to approach
6 it.

7 In terms of the litigation, there is a lawsuit still
8 pending in New Mexico. There will be argument in that
9 case on May 1; that is the present schedule.

10 CHAIRMAN HENDRIE: Is that the Federal District
11 Court, or is that a state court?

12 MR. EILPRIN: That is the Federal District Court,
13 and we had advised Judge Bratton that the Commission would be
14 reaching a policy judgment on these matters that are under
15 discussion today, reaching it early this year.

16 For that reason, and also because I think it would
17 assist public understanding, I think it would be useful if
18 the Commission could have a short policy statement explaining
19 whatever policy they adopt.

20 It is always preferable in litigation, especially
21 if a Federal agency wants to get its point across about what
22 they think the statutory obligations are, and why they have
23 adopted one course rather than another course, the best
24 way for that to get across is for the Commission and agency
25 to speak, rather than having a lawyer invent words for it.

1 So I think that I agree with the staff's
2 suggestion here, I think it is sensible for the Commission to
3 adopt it, and I would hope, in addition to that, the
4 Commission over the next couple of weeks could come up with a
5 policy statement which would take some of these considerations
6 into account and explain quite clearly and precisely the
7 basis for the decision that the Commission wishes to reach.

8 COMMISSIONER KENNEDY: That sounds reasonable to
9 me.

10 CHAIRMAN HENDRIE: What about the resources? You
11 are going to need the equivalent of a couple of people, and
12 a quarter of a million dollars in '78 you said.

13 MR. MEYERS: We have right now one person and
14 \$250,000, or \$200,000, set aside for that kind of assistance.
15 But the individual and \$150,000 of the \$200,000 is already
16 committed to this Pitch Project for the Forest Service. So
17 during fiscal '78 we have no resources to help any other
18 states, unless we get a couple more people and that \$250,00
19 I mentioned.

20 I might add we would not reprogram out of our own
21 resources to provide this kind of aid at the expense of our
22 own licensing activities.

23 MR. RYAN: I agree with that entirely.

24 MR. DIRKS: Well, when we get into resource
25 requirements, the natural inclination is, in a program like this,

1 is to take a look at where they have resources in other
2 areas. We have not looked around the Agency for this type
3 of resource in other offices.

4 CHAIRMAN HENDRIE: Let's see. We have a letter
5 from Mr. Udall and Mr. Hart jointly talking about legislation
6 that might soon be considered to address the issue of uranium
7 mill tailings and so on.

8 COMMISSIONER KENNEDY: Is this the one that we
9 just received yesterday?

10 CHAIRMAN HENDRIE: It's dated the 27th.

11 MR. PEDERSON: I just received it today. I don't
12 know when --

13 COMMISSIONER KENNEDY: I had never seen a copy of
14 it until it was sent up --

15 CHAIRMAN HENDRIE: It just came up, I guess.

16 MR. MEYERS: Well, on that one, this kind of
17 activity would provide some assistance. But what we are really
18 talking about there is right now whatever regulatory control
19 we exercise over uranium mill tailings is done because of the
20 material licence at the outset. Once the mill stops operating,
21 we have no regulatory authority over the mill tailings. And
22 we have already suggested to you, and received your approval
23 to prepare a legislative package to request such authority
24 to regulate the mill tailings explicitly.

25 MR. RYAN: I would also point out that the Chairman's

1 letter was about a call on the Treasury to take care of
2 abandoned sites, if that is indeed the same letter that I saw.

3 CHAIRMAN HENDRIE: It is actually both. It is
4 22 inactive sites and --

5 MR. RYAN: Well, in any event, it seems to me --

6 CHAIRMAN HENDRIE: And also gaps in existing
7 statutes and regulations which could allow this to occur
8 again in the future.

9 I believe that they have a bill up there that they --

10 MR. RYAN: \$200 million, I believe.

11 CHAIRMAN HENDRIE: Well, a fair piece of money
12 to deal with the inactive sites. There is the question
13 now what do we do to make sure this doesn't happen.

14 MR. RYAN: Inactive sites, Mr. Chairman, were
15 largely and should be a Federal responsibility. They were
16 developed originally as part of the weapons program, and so
17 on. So it really isn't the states.

18 CHAIRMAN HENDRIE: Yes. What caught my eye in the
19 letter was: "Further, the situation existing in states which
20 currently regulate uranium mill tailings under the Nuclear
21 Regulatory Commission state agreement plan should be of
22 special concern."

23 So there are going to be questions raised about the
24 differences in handling the things.

25 MR. RYAN: Mr. Chairman, perhaps you would like

1 to hear from Colorado now.

2 CHAIRMAN HENDRIE: I would appreciate it very
3 much. Would you like -- it seems to me we might even be
4 able to shove down a little bit and bring a chair up here
5 for you.

6 MR. MEYERS: I might add one thing we are
7 doing with the mills that we license is requiring a mill
8 tailing plan and financial arrangements to see that the plan
9 is carried out in the future. And we have got all of our
10 mills to agree. We are working with the various agreement
11 states to do the same sort of thing, but that is not complete
12 yet. If they are willing, fine, that problem is taken care
13 of.

14 But in terms of being able to regulate the tailing
15 itself, once the mill operation stops, there there would be
16 a conflict with another agency, and we don't have the
17 authority, and that would be EPA. EPA, under the Resource
18 Conservation Recovery Act, could classify mill tailings as
19 a hazardous material, and thereby draw it into their regulatory
20 process for that program. You would then be faced with a
21 mill operator going to two organizations. I think we spoke
22 about this before. You get a license at the wrong time
23 in the process, when it is all over. The best time to attack
24 that particular problem is before you license the mill, not
25 after it is all over.

1 MR. RYAN: Mr. Chairman, if I may interrupt for a
2 moment, in our experience with the agreement states, it has
3 been that every time we have a matter like this, conditioning
4 of a license or something, which is suggested at the Federal
5 level, it is accepted at the agreement state level. So I
6 think if we go by history, I think we would have to say the
7 agreement states would no doubt agree to conditioning licenses
8 and stipulations of this sort. Excuse me.

9 DR. ROBBINS: I am Dr. Anthony Robbins, the
10 Executive Director of the Colorado Department of Health.

11 I appreciate the description of what we have been
12 through with your staff. Let me make just a few points, if
13 I may.

14 On this latest issue, one of the interesting
15 situations is that the Colorado statute, from which the Health
16 Department gets its authority, and the regulations that they
17 are developing, covers just the problem you are talking
18 about.

19 We have provisions for perpetual management of
20 tailings, and we have the authority to deal with the radium
21 and other low level wastes that are in those piles.

22 From that same statute, we assume that we have a
23 responsibility to do an environmental assessment that includes
24 radiation, air, water, and the social and economic impact
25 of these developments.

1 You may know that in our dealings with the
2 Departments of Agriculture and Interior, we are trying to
3 work out ways that the environmental impact statements in
4 Colorado be somewhat broader than individual projects, that
5 we can take into consideration the impact on regions where
6 energy development will be occurring.

7 I guess the point that is interesting to us --
8 and I appreciate the opportunity to have this discussion with
9 you, because it has never been completely clear where everyone
10 was going until this came along. This would be a very
11 valuable kind of arrangement for us. It seems to us it would
12 let us define, in terms of our state statute, the needed
13 review, what kinds of information have to come out for us to
14 be able to issue or not issue a license.

15 It would let us have a very constructive and useful
16 dialogue with your staff, and your people, over the tasks
17 that need to be performed to get to that point.

18 I think that, frankly, one of the problems in
19 the agreement state programs is that they have not provided
20 maybe as much cross-fertilization on these issues as maybe they
21 could. I mean,

22 And from our point of view, the other matter,
23 which is that the Commission would be providing us resources
24 to do the job; that is very important. The question of whether
25 we could do this without that help is really one of time.

1 We have a much smaller staff, we can eventually get all of
2 the people we need to do all of the things that need to be
3 done, but there is no question that we would be into a much
4 slower and less efficient process than what we could do
5 with your help.

6 This raises an interesting problem, and one of the
7 things all of our discussion, or a lot of our discussions
8 with your staff have been in terms of this agreement. We have
9 been talking in terms of a document, an agreement, a formal
10 arrangement.

11 It is not clear to me whether in fact that agreement
12 is necessary from our point of view to get the kind of help
13 we feel we need.

14 I have been enlightened by some of the comments
15 here today in terms of what purposes it serves for the
16 Commission. But one of the problems we would get into in this
17 is that once we have this agreement and once we go through
18 a process in which we tell the applicant for a license that
19 we are going to a certain kind of environmental review, we are
20 then in a terrible bind if we get into a situation where the
21 resources that are needed to do that job don't materialize,
22 for one reason or another.

23 If you want to turn down the license at that
24 point because you don't have it, you are going to be challenged.
25 And if we want to give the license without that review, we

1 will also be challenged, presumably from the other side.
2 And we are concerned with this agreement, which is still
3 very general, that it doesn't protect us from that situation
4 adequately.

5 I guess what we might be interested in is some
6 commitment. What we have been talking about up to now is
7 no cash going to the states, but simply making available the
8 resources out of the Commission's staff.

9 I think that is in general fine. But we are the
10 ones within the state who will be counting on this and probably
11 need some sort of back-up guarantee in terms of money being
12 available if staff isn't available to do the job.

13 Finally, I guess what you are getting at -- and
14 I think it is very reasonable -- is some kind of national
15 policy in the long-run on licensing of uranium mills.

16 I must tell you, at this point, that, if anything,
17 Colorado is probably more conservative than any other state
18 right now. We have had a very bitter experiences with tailings
19 piles, and the Hart and Udall proposed legislation reflects
20 some of that problem. The politics in Colorado, I think,
21 is fairly determined that that isn't going to happen again.
22 And that is the real basis why at this time we are looking
23 for this kind of help so we can do an adequate review.

24 If there is developed out of the Commission a
25 national policy that relates to supply, that relates to where

1 uranium is going to come from, all of these issues seem
2 appropriate to be developed at the national level. From
3 Colorado's point of view, we are concerned about the public
4 health and safety, and therefore the environmental impact of what
5 goes on in Colorado, and that is all we are seeking help for
6 at this time.

7 One other point is that any agreement that comes
8 out of here, we have committed ourselves publicly to taking
9 the draft agreement that has been agreed to, if it is agreed
10 upon, to public hearings in Colorado. And I think you should
11 know that.

12 CHAIRMAN HENDREY: We thank you very much. It is
13 very helpful to have these comments from interested parties,
14 perhaps the most interested party.

15 DR. ROBBINS: Thank you.

16 COMMISSIONER KENNEDY: I guess I have one question.
17 Maybe two. How far do we go with the question of public
18 participation in the states as a general rule? It is one
19 thing in Colorado, where I think there is a very high order
20 of public participation. In some other states that is not
21 quite true. And that is by their own design and indeed by
22 their own legislative authorities.

23 Now are we in effect legislating something for
24 them that they refuse to legislate for themselves?

25 MR. MEYERS: I think not. We are talking about
degree here.

1 COMMISSIONER KENNEDY: I am only suggesting that,
2 or I am asking, really.

3 MR. MEYERS: I would suggest that assuming we
4 provide the aid, the location of the particular mill --
5 perhaps you open up a public document room, which they may
6 not do now. Perhaps hold a public hearing in that particular
7 area, circulate the document that is now independently
8 analyzed by the state with the aid that we provide to Federal
9 agencies, state agencies, environmental groups in the state,
10 et cetera, things like that.

11 The various states do have public participation
12 by virtue of their own administrative laws. We are talking
13 about degree here rather than something that is not being
14 done, or forcing them to do something.

15 COMMISSIONER KENNEDY: But you do not see this as
16 a stumbling block of significance?

17 MR. MEYERS: No, I think that this kind of
18 assistance would be welcomed by all parties.

19 MR. RYAN: May I make a comment, Mr. Chairman?

20 CHAIRMAN HENDRIE: Yes.

21 MR. RYAN: I hesitate to generalize about states,
22 but we are talking here basically about --

23 COMMISSIONER KENNEDY: That is a very dangerous
24 things to do.

25 MR. RYAN: We are talking here about Western states,

1 Washington, Oregon, Nevada, Arizona, New Mexico, Texas,
2 Colorado, the uranium belt, so-called. Utah, Wyoming, of
3 course, are not agreement states.

4 If I could generalize, I would say that the
5 statutes commanding and demanding and urging public participation
6 are probably as extensive in the Western states as they are
7 in any other part of the country, and probably more so.
8 They have introduced a lot of this stuff.

9 MR. EILPRIN: I think New Mexico is not quite
10 that far along.

11 MR. RYAN: That is the danger of generalizing.

12 MR. EILPRIN: Right. I think as a legal matter,
13 when you enter into a contract with a state, with anyone,
14 you are allowed to impose conditions.

15 COMMISSIONER KENNEDY: I guess my real question
16 is, to rephrase it, are those conditions -- I am not arguing
17 the question of whether they are right or wrong -- but are
18 those conditions likely to be serious stumbling blocks, thus
19 making it impossible to go forward with this notion?

20 MR. RYAN: Not in my judgement.

21 MR. MEYERS: I think not.

22 COMMISSIONER KENNEDY: One other question. A
23 number of the states, as you mentioned earlier, have specifically
24 not voted to call for environmental assessments. Would
25 they be able to call upon us for this kind of assistance?

1 MR. MEYERS: Colorado is one of them, and
2 remember, when you pass a state environmental policy act,
3 you are talking about all state actions, as you would all
4 Federal actions. This is a rather narrowly confined area
5 that the State of Colorado has already said, based upon
6 bitter past experience, they want to do right. So this just
7 helps them do it right.

8 That is hard to say, whether New Mexico would
9 rebel against doing the kind of independent analysis --

10 COMMISSIONER KENNEDY: Actually New Mexico is
11 doing a very substantial job right now, as I understand it.

12 MR. MEYERS: Yes. But again they -- as a matter
13 of fact, New Mexico had a state environmental policy act
14 that was repealed --

15 MR. RYAN: No, it wasn't funded. It sort of
16 died on the vine.

17 MR. EILPRIN: It wasn't funded and then it was
18 repealed. You were both right.

19 COMMISSIONER KENNEDY: That, I might say, is at
20 least consistent.

21 MR. MEYERS: At least it is in the right order.

22 COMMISSIONER KENNEDY: Yes. If you are not going
23 to fund it, don't leave it there, repeal it.

24 MR. EILPRIN: These agreements would be signed
25 by the Governor of the state. SO I would think that that

1 would establish state policy in terms of being able to conduct
2 the kind of reviews we contemplate.

3 MR. MEYERS: Let's take a hypothetical case,
4 where a particular state said no, not for me. We wouldn't
5 have an agreement with that state.

6 COMMISSIONER KENNEDY: That is the answer to the
7 question.

8 MR. MALSCH: Also the draft agreements avoid a
9 strong connotation of coercion by the Federal Government.
10 It is very carefully drafted as to what to do with certain
11 documents.

12 MR. DIRKS: I think that is the reason for the
13 time limit on this thing, to see how far we can go with this
14 program.

15 COMMISSIONER KENNEDY: The time limit makes sense
16 to me anyway. You really need to know where this program is
17 going.

18 MR. PEDERSON: That is why I mentioned, that's
19 right, it has to be used as an interim thing. Precisely correct.

20 MR. RYAN: This will give you an opportunity to do
21 it.

22 CHAIRMAN HENDRIE: Well, I must say there seem to be
23 a number of good reasons why this is a direction that the
24 Commission should move. I would be very interested to see
25 the-- and I would ask the staff to please start forming some

1 drafts of a suitable policy statement along this line. And I
2 think I would like to see that outline perhaps before we
3 lock the agreement here in firmly.

4 It also gives me a chance to query the financial
5 administrative side of the Agency about where the resources
6 come from. They are not large, measured against the total size
7 of the Agency or its budget. On the other hand, it is my
8 assumption that all of the people in the Agency are doing some-
9 thing, and planning to do something useful this year, so I assume
10 if we squeeze out one or two, that there is some other job
11 which will then not be done, and I think we ought to have
12 in mind what that will be as a part of the whole process.

13 I think this has been a very useful discussion,
14 with particular thanks to our visitors from Colorado.

15 I think I would like to leave the discussion at
16 that point then, and ask you to come back as soon as you
17 reasonably can do so, with a draft on the policy statement.

18 And for whoever the prime drafter may be, I
19 assume you will touch bases with the several legal offices of
20 the Commissions, so all of our assorted litigation interests
21 can be suitably served.

22 Okay. I would like to turn, if I could then,
23 to a matter which came close to decision yesterday -- before
24 we do that, let's recess for a short time to reform.

25 (Thereupon, at 3:45 p.m. the meeting on
Impacts of Uranium Mills was concluded.)

