

1
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING BY ORGANIZATION
OF AGREEMENT STATES

PUBLIC MEETING

U.S. Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland
Monday, February 26, 1996

The Commission met, pursuant to notice, at 10:00 a.m., the Honorable Shirley A. Jackson, chairman, presiding.

COMMISSIONERS PRESENT:

SHIRLEY A. JACKSON, CHAIRMAN
KENNETH C. ROGERS, COMMISSIONER
GRETA J. DICUS, COMMISSIONER

2
NRC STAFF PRESENT:

MARTIN MALSCH, Deputy General Counsel
JOHN C. HOYLE, Secretary

REPRESENTING THE ORGANIZATION OF AGREEMENT STATES:

TERRY STRONG, Chairman
BOB QUILLIN, Chairman-Elect
RICHARD RATLIFF, Past Chairman
TOM HILL, Secretary

3
P R O C E E D I N G S

[10:00 a.m.]

CHAIRMAN JACKSON: Good morning, ladies and gentlemen. This morning I would like to welcome representatives from the Organization of Agreement States -- Mr. Hill, Mr. Ratliff, Mr. Strong and Mr. Quillin -- who will be briefing the Commission on some of the more significant issues confronting the Agreement States today.

Today's briefing by the Organization of Agreement States is important to the Commission for several reasons. Nearly three-quarters of the materials licensees, about 15,000 in this country, are regulated by 29 Agreement States. The size of this program makes it critical that the NRC and the Agreement States work effectively and efficiently to ensure that public health and safety are adequately protected. Only through cooperative efforts of both organizations will this program continue to succeed.

Today the Commission looks forward to hearing from you on your views on the status of the program, but before we begin I would like to note that this is the first public Commission meeting for our newest Commissioner, Commissioner Greta Dicus. I'd like to publicly introduce her, then.

I frankly find it quite fitting and indeed comforting to have Commissioner Dicus at this particular briefing, since she is a former chairman of the Organization

4
of Agreement States. So Commissioner Dicus, welcome.

Commissioner Rogers, do you have anything you'd like to add?

COMMISSIONER ROGERS: No, not at this time.

CHAIRMAN JACKSON: Commissioner Dicus, anything to add?

COMMISSIONER DICUS: Not at this time.

CHAIRMAN JACKSON: If not, Mr. Strong, you may proceed.

MR. STRONG: Good morning.

I have been in this business for a long time now and have been a participant in the NRC Agreement States relationship for a very long time. I want to start with this issue and I will come back to it at the end of my remarks.

In my dealings in environmental health, broadly in environmental health in the State of Washington, the Agreement State program is probably the best example of state and federal relationships that exist in the government today. There are observers that point to this as the best example, as the way programs can run, should run. It's an outstanding example of the states and the federal government working together on the same kinds of programs. We have the same assignment in terms of radioactive materials.

It's just an outstanding program, and there are

5

several things that I want to look at specifically that are examples maybe of -- I don't want to say inattention, but it's like a marriage; the relationship needs to be worked at. It needs to be groomed and taken care of and nurtured on a continuing basis. There are several examples, several things that I want to address as examples maybe of where we can take better care of it.

There are two recent examples of doing business as usual -- adopting rules, because that's usually the way we do things; that's how we address these things. The example of the Nuclear Regulatory Commission adopting a rule that is intended to prevent the intentional exposure from the use of radioactive materials.

I don't know that the states and the Nuclear Regulatory Commission talked about that rule, about what we could do, maybe other than adopting a rule, that would have been just as effective, and the states didn't get involved in that. I don't know if we had gotten involved in it that something else might have been the result, but the NRC proceeded to adopt that rule.

There's -- you'll hear more about it as we go on -- the QM rule in regulating the uses of radioisotopes in medicine. The federal government and the states talked back and forth for a long time about that rule. And I don't want to imply that the states always know what is the right --

6

CHAIRMAN JACKSON: Which rule are you referring to here, the one that you're saying that the states and the NRC talk back and forth about.

MR. STRONG: The QM rule?

CHAIRMAN JACKSON: Is that the one we're --

MR. STRONG: Yes. I think that our advice was, "Don't do that. We don't think that's the right thing to do. We would hope that you wouldn't do that. Don't do that." And it got done anyway and now I think -- and the states, many of the states have adopted the same rule, and it doesn't work very well.

I'm not sure what we could have done together in advance that might have prevented that except that we all proceeded down the road kind of independently and it didn't -- I don't think it's worked out just right for all of us.

CHAIRMAN JACKSON: Can you give a little more specificity to that by giving me one or two what you feel to be particular vulnerabilities or negatives?

MR. STRONG: Can I come back?

CHAIRMAN JACKSON: Sure.

MR. STRONG: Can I come back at the end? Okay.

We talked about that but we didn't connect, on the discussions, on the advice that we were working with.

Let me change gears to the Department of Energy.

7

There's been a number of reports. There's been a number of initiatives that have gone on involving the Department of Energy and the regulation of radioactive materials that are used by the Department of Energy and their privatization initiatives that they have dealt with.

Our sense of it is that the Nuclear Regulatory Commission is really not enthusiastic, is maybe not able at this point to regulate the uses of radioactive materials that are used by the Department of Energy.

The states probably don't have the resources, either, but the states are there. In my case, in the State of Washington, I deal directly with the Department of Energy on the Hanford Reservation all the time. There are discussions going on right now that would allow the State of Washington radiation protection program to regulate the uses of radioactive materials on the Hanford Reservation. They seem interested in that. We're interested in that.

I guess that I want to -- I don't want to go away from or get out in front of the Nuclear Regulatory Commission on that issue. I want to make sure that we connect, that the discussions are complete and thorough and that we do this together. We have a common assignment, to regulate the uses of radioactive materials.

There's another initiative that you have that affects the relationship between your organization and our

8

organizations. Your strategic initiative rebaselining activity is going to address a lot of these things, and I would hope as that goes forward, there are certain key issues I know you have been involved in -- the Commission has. The issue of training and travel funding for the states -- that's a real hot button for us, that as your strategic assessment looks at the relationship between you and us, that that gets taken care of, examined so that hopefully we can all be happy with that issue, as it would end up.

The IMPEP program, the evaluation of our programs and your regional programs as radioactive materials are regulated -- I think that is on the positive side. I think we are working together on that program, and I think that we dare not disconnect on that. It's not done. We need to make sure that that is done properly.

CHAIRMAN JACKSON: Do you have any thoughts about the effectiveness of the program to date?

MR. STRONG: Well, it's new. After the pilot activities, you've done one program. And I think my conversations with North Carolina and the people who participated in that program, I think that -- well, it's your first time out, our first time out in the program.

No, except that it's positive. What I hear is that it's positive. That's going to work all right. It's

9

an example of where we have gotten together and connected and can make this thing work.

You're doing something else that I hope that we could address, and that is the closest connection between you and me, in the State of Washington, is the state liaison officer, your person that is still in Walnut Creek. When he retires, when he leaves, the plan is not to replace him, not to replace that position, and you would bring that FTE back here to Washington. And Bob Doda's FTE will come back to Washington.

My ability to connect with you, to maintain the relationship between us, when we have the same business -- we're in the same business together -- I can say that I wish you wouldn't do that. I wish you wouldn't take that FTE away, but I understand the necessity.

What I want to do is connect with you and talk with you and make sure that we can all agree that that's the best way to proceed with those FTEs. I'm really concerned about the distance, simple things like time zone changes. When I'm still working in my office at 5:00, you all are gone home. At 8:00, I can't find you.

CHAIRMAN JACKSON: I'm here.

MR. STRONG: But I'm sure that you're not going to give me your telephone number and I'm not going to call you up. But there's somebody in the office at Walnut Creek at

10

5:00, when it's still 5:00 my time, and that's what I'm driving at.

I want to go back to what I started with. This Agreement State program with the Nuclear Regulatory Commission is the most outstanding program, after all my years of experience, I'm looking at the other federal agencies that we relate to and I don't want this to get damaged. I don't want, because of neglect, because of our failure to communicate properly, because something goes wrong -- I want to stay connected and I want this to work. And I guess that's the bottom line of my message.

I think that Richard is going to talk specifically about a program where we do connect.

CHAIRMAN JACKSON: Why don't we walk through your

agenda, and then we'll come back. I have a number of questions and comments for you.

MR. RATLIFF: As I've been here before, we've talked about various issues, but one that I think affects not all Agreement States but the majority of them is the industrial radiography rules. I think over the years, in the courses I went to as a new inspector, NRC really instilled in all of us the fact that this was an area where there was the gravest danger, that prior to Chernobyl there were probably more radiation deaths from industrial radiography than any other commercial use of radioactive material.

11

So we knew that there was a lot of problems. The State of Texas worked with the Nuclear Regulatory Commission in producing two documents -- "Working Safely in Gamma radiography," another one that looked at all the overexposures, and it was kind of a document to show radiographers how their dumb mistakes can lead to real loss of limb and serious radiation exposure.

And I think to that end, we all worked together to really develop programs to try to stop these extremely high exposures, primarily to young males who were normally what they called at that time assistant radiographers. That title meant that I may have been hired that morning and I was now in charge of making radiographic exposures.

So I think the first step that worked well was the NRC set up a steering committee and invited three of the states. I was on the committee with Ronny Wascom from Louisiana and Don Honey from California. And from NRC, Tony Hsia chaired it and did a great job, because this was Tony's first time to see radiography and we went to all of the manufacturers and we went to field sites.

And what became clear through this meeting that we all knew was if a radiographer used his or her survey meter to check at the end of the exposure, there would be no problem, but in reality, because of poor working conditions,

12

the constant push by the foreman, especially on pipeline jobs, to get moving, they didn't use their meter and then they had problems with exposures.

The report that we issued, though, set up a comprehensive program we felt would help this to improve the training, which was definitely needed because when you have a person out there who has never seen a radioactive source and ends up picking it up and holding it in his hands, you're looking at the worst possible situation.

So training was a real strong need, and a verification of training through a testing program, and improvement of equipment because we knew that many times, the equipment would not work. You would crank a source out and it would become disconnected. And even if you used some of your best safety efforts, you still had exposures that were unnecessary.

This document was submitted to the Commission in '84. It was titled "Radiography Equipment Safety Performance Criteria." And because we have so many industrial radiographers in the Southwest, along the Gulf Coast area, Texas decided and we applied for a grant from NRC to do a pilot certification test.

And NRC funded this, about half of the funds for this, and Texas went and developed a test that was monitored and designed by a cyclometrician. I never knew was a

13

cyclometrician was until then. But this person from the University of Texas, she was able to show us that it's not only the correct answer that's important on a test but you have to make sure the wrong answers don't deceive people.

What we were able to do was develop a bank of 500 questions that we provided to NRC and then proceeded forward to have additional questions that had been certified. So we developed a whole bank of questions.

Based on the report that NRC had, Texas and several other states went forward then and continued with their rules. We actually put equipment standards in our rules and went with a two-person radiographer crew. We felt that if you had a -- all of our problems in Texas, Oklahoma, Louisiana, had primarily been young, new assistant radiographers with no training. We felt that if you eliminated that problem, where you never had an assistant on a job just with another radiographer, where they could get in trouble, it would alleviate a lot of the problems.

And so we instituted that program and as it

developed, we started seeing a real improvement in the performance of radiography companies. We eliminated, almost within a two-year period, the number of burns. We were seeing probably two to three burns, either on fingers or hands. We had one person who was sterilized from the radiation. We had really an early win.

14

We saw another thing, too, that all of a sudden these people, these industrial radiographers had pride. They would complain that they went to the dentist and the dental technician had to take three sets of films because they didn't know how to develop them properly and why shouldn't they be credentialed? And you actually saw a change in this field. I think it was really positive and really led me to believe that these people now understood and if they saw a bare radioactive source, you would no longer have them pick it up and hold it and result in a major injury to themselves.

So one of the things that one of my former bosses did at a national meeting, at Bailey, was talking about this radiography, and he said the other side benefit is all the bad radiographers go to the other states and NRC states now.

Well, it wasn't long after that that we had people from all over the country sending their radiographers to take the Texas test so they could say that they had passed the test and they could get jobs in other states.

And since that point, Texas worked with the Conference of Radiation Control Program Directors, and there are now seven states -- one of them a non-Agreement State, Oklahoma -- who actually use the Texas test. They brokered it through the conference and they're able to make sure that these people who come on the job are trained.

15

Since the initial testing program in '87 there's been over 4,000 radiographers in Texas and 8,000 across the United States who have taken this test and passed it.

We feel that we've come a long way. Part of our rules, where we were changing the equipment standards, was probably the hardest to implement because you had, at the time, four major companies who made radiography equipment, and they just couldn't meet those standards. And they would come, they met with us many times, until now, as you're aware, finally the new radiography equipment standards are now finalized in NRC's rules and we all see, I think, a real positive outcome.

All of us, as regulators, though, and our people should have seen it even more so, since we have so many radiographers, didn't comprehend all the things in the rule that would happen. One of them was that the gamma pipeliners, which is a device that's just put on the pipeline -- it doesn't have a source crank out -- doesn't meet the new standards. So we have a lot of companies that use pipeliners that really, because of radiation exposure limits in the new rules, can't use them, and the fact that there's only one company with cobalt-60 units that's authorized to sell them.

So we're working with those licensees on a case by case basis. In fact, we've had good working relationships

16

with NRC on this. I don't think any of us realize that the airlines, when they radiograph airplane engines, have a special need where their end of their guide tube can't meet the ANSI standard because you have a thin tube that goes into the engine. But in fact, it's locked in place and it's tested before you crank the source out.

So we didn't want to shut the airlines down or not have their engines radiographed, because we have to fly to these meetings. And I think it's worked well. That's been a good area.

The area where I think we've had a problem in the recent times is the two-person crew. We feel real strong, in the southern states that have a lot of radiographers, that you really need two people there, and in Texas we feel it needs to be two radiographers, to make sure that operations are conducted safely, and the reason being that you're using many times 200 Curie of radioactive sources. And with these large sources, you're really at a potential for a real public health threat is they're not properly used.

I think NRC had a good process of getting input on their Part 34, going to industry, to the states, and I would have to say it's probably the best participatory rulemaking I've seen amongst NRC and the states.

The only problem we had is when it finally came

17

out, the two-person crew was eliminated, even though the industry people doing field radiography supported it, the states supported it, and some of NRC supported it. And I feel that's an area that we really do a disservice on temporary job site radiography by not having two-person crews.

The current NRC rule will be coming forward to you, I think, and I appeal that you take a real close look at that and work with the states because we really feel strongly that without two persons being required, you'll run into a situation where you could have a grave threat to public health develop if there's an accidental situation.

We feel that the proposed language that we last saw, where you would post signs to warn people to keep out of this area because it could be a potentially dangerous area just doesn't cut it for public health and safety.

We feel that the certification process that you have adopted, though, is going to work well, and we're hoping -- you know, one of the resolutions that I sent to you after we had our Agreement States meeting was to set up a group, and I think Terry is working on that, where the NRC and the Agreement States and the Conference of Radiation Control can work together because once we have multiple certification programs, what we're going to have to do is make sure that we recognize them under reciprocity, or else

18

the whole program becomes bureaucratic, and we really don't help safety.

And so to that end, the Conference of Radiation Control Program Directors is going to approve and set up a 1996 training session for radiographers for regulators in Houston, Texas, and we feel this will get everybody together to work out the problems, if there are any problems, on reciprocity, on what is the minimum training course required before you can take a radiography certification test, and we feel one of the more important things, how much on-the-job training must you have before you can actually take that test and become a radiographer.

I think that this is an area, and Chairman Jackson, this has been, I think, a good example of us working together. We spent many hours, we've looked at technical issues, we've looked at the issues of economics, and I feel that we're at a point now where we can eliminate all the overexposures if we just follow through with this process.

CHAIRMAN JACKSON: Thank you.

MR. STRONG: Mr. Quillin.

MR. QUILLIN: I would like to review with you some of the constraints that states currently face in adopting regulations or implementing regulations. These constraints particularly come into play when issues of regulatory

19

compatibility with NRC regulations are involved.

First, many states, including my own, have all of their rules and regulations reviewed by their legislature. In Colorado's law, it is by the Legislative Counsel. If the Legislative Counsel determines that a regulation is outside the scope of the enabling statute, the agency that adopted the regulation has the option of withdrawing the regulation or appearing before a legislative committee. My experience is that very few agencies have the legislative committee agreeing with them and disagreeing with the Legislative Counsel. In fact, there is a real risk in this encounter of the committee interpreting issues beyond those initially under discussion.

While the review normally comes soon after new regulations are adopted, certain more universal issues affecting multiple agencies can be addressed at any later time.

Second, legislatures have the option of sunseting regulations after a period of time. In our state, this involves a statute each year which continues all regulations with certain identified exceptions. A bill is pending in our legislature, however, to sunset all future regulations after three years and all existing regulations on July 1, 1999.

Third, takings are a major issue in the states.

20

Takings mean any action of a governmental entity by which private property is taken or damaged such that a court may require compensation to the owner. By my count, we have six

bills in our legislature on this issue. They range from creating a factfinder to help resolve disputes to requiring removal of any state employee responsible for mandating the state action or promulgating a regulation which resulted in a state agency violating a property right.

My division was involved in a takings case which began in 1987 and ended in 1995. The state won the case in the Colorado Supreme Court, having lost in all of the lower courts. The plaintiff appealed for rehearing before the Colorado Supreme Court and was denied and asked for a hearing before the U.S. Supreme Court and was denied. While the state ultimately won this case, it took a long time and considerable resources to litigate this case.

Fourth, cost-benefit considerations are becoming a more important consideration in justifying regulations. In our existing administrative procedures process, we must make a cost-benefit finding. Legislation is pending to require a more comprehensive risk-benefit analysis if the cost of implementation of a regulation is estimated to exceed \$1 million. This cost includes the cost to the state, its citizens and persons affected by the proposed regulation. No time limit is specified.

21

Because of legislation passed last year, our Air Pollution Control Division has had to hire an environmental economist to perform specific analyses required in that area. The State of Washington, in a revision to their regulatory development process last year, now requires a small business economic impact statement.

I must challenge the Nuclear Regulatory Commission to do more thorough and documentable cost-benefit analyses in their regulatory processes. When we have had to adopt a regulation due to compatibility requirements, I honestly have not found the NRC analyses to be that supportable or transferable.

CHAIRMAN JACKSON: You're saying that this is true across the board?

MR. QUILLIN: In the ones that we've had to adopt, yes. We've had very great difficulty in trying to translate that into the local environment.

CHAIRMAN JACKSON: Now, some of our rules have to be subjected to a backfit analysis. That does not give you the kind of cost-benefit information and documentation that you think you need. Is that what you're telling me?

MR. QUILLIN: One of the weaknesses is that the basic assumptions, and I'll give you an example on the current rulemaking on incident reporting, the assumption there is that we have three choices. We either adopt a rule

22

or we put this into regulation or we basically do nothing. And the decision was to adopt a rule.

The assumption, I think, was that 20 hours would be used to perform one of these analyses as to whether it's an incident that needs to be reported or it's not, and the cost is whatever your hourly cost is -- \$117 an hour, or something like that. So the total cost to a licensee is \$2,000.

Our experience in this is that that underestimates the time involved and the expense involved in doing that kind of analysis on a routine basis. That may be just our experience, but that's basically the experience we've had.

We're involved in a case right now where it's questionable whether it was or was not intentional and whether it was or was not regulated material. I spent probably 10 hours of my own time on that particular case, trying to figure out and help the licensee through the process. I know the licensee has spent at least 20 hours on that case.

I think the cost-benefit analyses have to look at more options and give a degree of uncertainty that the range may be as low as such and as high as such and we think the average is such, so that you have a better feeling for what the cost is going to be.

Sixth, most, if not all states, have

23

Administrative Procedures Acts. Ours requires a public hearing on proposed regulations. While you attempt to resolve all issues prior to the public hearing, you never know who will appear and what they may say. If the comments received at the hearing appear reasonable, the hearing panel may require that you start all over in the process, with consequent delays. I can assure you that panels do not like to have major controversies presented to them in a public

hearing and that compromise is the order of the day.

I skipped fifth, which is our goal is to achieve compliance with our regulations. Our priority is to use compliance assistance to achieve this, not enforcement. I recognize that enforcement must be used in certain cases, but in the long run, compliance assistance is more effective and more acceptable to our customers.

Our goal is the win-win situation. We have one licensee that we have been at swords points for years. We both recognized that this was not a productive use of their or our resources. Using a TQM process, we have now resolved a number of major issues and developed a positive working relationship. Win-win results are achievable.

Seventh, there are frequently jurisdictional overlaps in the states. A prime example are licensing boards. Some of these boards may guard their turf jealously. When the NRC issues a regulation which requires

.
24

certain qualifications of an already state licensed individual, there is always the potential for conflict in an Agreement State.

There may also be jurisdictional overlaps with agencies that regulate activities such as hospitals or health care organizations or other non-health care organizations and companies. These overlaps must be taken into consideration as an Agreement State adopts regulations and appropriate compromises are subsequently made.

Eighth and last, Colorado may be unique but we have a self-audit statute which provides confidentiality for audits done by regulated entities. This confidentiality does not apply to records or surveys which are required specifically by statute or by regulations. NRC's regulations and our regulations require many such surveys and records. However, we are limited to these and cannot use any other materials a licensee develops itself.

This is a particular problem in the EPA programs, where there is less specificity in surveys and records requirements. Obviously any additional records which we might want to require in the future would have to meet the cost-benefit considerations.

In summary, the Agreement States face challenges in the adoption of regulations and in the implementation of regulations which go beyond those faces by the Nuclear

.
25

Regulatory Commission. As the NRC sets compatibility levels for its regulations, it needs to consider the challenges that the Agreement States face in adopting identical or similar regulations.

CHAIRMAN JACKSON: Are you done?

MR. QUILLIN: I'm done.

CHAIRMAN JACKSON: Mr. Hill.

MR. HILL: Thank you. My comments parallel somewhat those that Terry started the briefing with.

The Agreement States relationship with NRC for years has been one of reactivity, and there's no pun intended with that. The Agreement States have reacted to actions initiated by NRC. We are and have been comfortable in that role. I believe NRC is also comfortable with the Agreement States being in that role.

It's much easier for NRC to respond to the states when we are reactive. After all, NRC has initiated rules, licensees have reacted to that, NRC has responded to that, and that seems to become the relationship the NRC and the Agreement States have had and probably is the basis for the Agreement States' long-standing complaint of being felt treated as licensees.

When the Agreement States endeavor to shift from reactive to being pro-active, it moves us out of our comfort zones, and I believe it moves NRC out of its comfort zone,

.
26

also. As evidence, I put forth the Adequacy and Compatibility Resolution by the Agreement States in 1989 and the Agreement States' desire for early and substantive input into rulemaking.

Looking back a little bit, on October 30, 1995 at the NRC Agreement States meeting, Wayne Kerr gave what he referred to as a progress report card on the issue of adequacy and compatibility. I'm not going into that further here, as that's available in the transcript of the meeting.

At that meeting we saw and heard about the progress being made in early and substantive input in rulemaking and other initiatives affecting the Agreement States. Examples included states' involvement in IMPEP

reviews, in the NRC working groups, in state input at the draft rulemaking plan stage.

Progress has been made and I trust will continue to be made as we work to become accustomed to changing roles.

There is another area that I believe we need to work closely with NRC, rather than reacting to NRC, and that's the area of strategic planning.

Since I first drafted these thoughts, two items come to my attention that I think illustrate the difficulty with accepting changing roles. On the 31st of January 1996, a Federal Register notice was published announcing a

27

proposed addition to Part 20. This has been mentioned here already today, Section 20.2205, entitled "Reports of Unauthorized Use of Licensed Radioactive Material." The states did not have an opportunity for early input into the proposed rule.

The second item has to do with states' input into rulemaking. The current bulletin board process provides for Agreement State input into a draft rulemaking plan. This is an effective process. Through interactions with NRC staff in recent weeks I've become generally aware that the Commission is possibly considering revisions to the rulemaking plan process. The Organization of Agreement States would not welcome any revision that would reduce the opportunity for Agreement States to provide early and substantive input into the rulemaking planning process.

NRC's proposed rules affecting materials licensees generally require that the Agreement States adopt an equivalent rule to maintain a compatible program. When the Agreement States have the opportunity, based on their experiences, for early and substantive input into the rulemaking plan, as well as the proposed rule, they're more likely to support the final rule.

Since the final rule has been defined at the planning stage, comments at later stages in the rulemaking process by the Agreement States have resulted in few

28

modifications to NRC's positions.

Current challenges that are facing the states, as well as NRC, include budget cuts, shifting regulatory emphasis from prescriptive to performance-based rules, a reduced materials workload for NRC as more states sign agreements, NRC's rebaselining initiative, and the report by the Institute of Medicine of the National Academy of Sciences.

Budget cuts. We have been hearing about and are aware of budget cuts at the federal level. We at the states are also experiencing budget cuts. In Georgia, the budget-cutting effort is referred to as redirection -- a redirection of resources from lower priority areas to higher priority areas within the state.

Also coupled with the redirection is the privatization of certain state activities. Governor Miller has mandated a 5 percent redirection or budget cut for each of the next three fiscal years. The total will be greater than 15 percent, since inflation cannot be considered after each year.

Performance-based rules. We're also aware of the desire of the regulated communities for a shift away from prescriptive rules to performance-based rules. NRC's been working in this area with rulemaking for some time, and the trend towards performance-based rules appears to be gaining

29

momentum. I had a gentleman in my office just last week talking about performance-based rules and the industry's desire for those.

NRC is either currently regulating as many materials licensees as some of the larger Agreement States, or will be in the not too distant future. Massachusetts is to become an Agreement State in 1996 and Ohio, Oklahoma and possibly Pennsylvania may become Agreement States a few years later.

To touch on the rebaselining issue, NRC is undertaking a rebaselining initiative, as described by Hugh Thompson at the October 1995 NRC Agreement States meeting. A 13-member committee is charged with reviewing NRC activities to ensure that these activities are in line with NRC's mission.

We understand that the initiative is to be completed by the fall of 1996 and consists of four phases: reviews and assessment of some 4 to 5,000 on-going NRC

activities; strategic planning, resulting in a new set of goals and strategies; organization of NRC; and human resource assessment. My interpretation of human resource assessment is doing more with less staff. Or it could possibly mean having staff do different things.

Will the rebaselining effort of NRC, by default, redefine, via compatibility and adequacy, the way Agreement States regulate?

30

States regulate?

The National Academy of Sciences report. Since the NRC Agreement States meeting last October, the Institute of Medicine, National Academy of Sciences, released their report entitled "Radiation in Medicine, a Need for Regulatory Reform." The implementation of the recommendations in the report can greatly impact the way the NRC and Agreement States regulate the use of radioactive material in medicine.

Those are all activities that are currently facing NRC, in a very abbreviated form, and the Agreement States. I think they kind of speak to a challenge that we have, and I enumerated those to ask this question: What will the regulatory playing field look like in, say, two, three, or even five years from now?

I believe that NRC's rebaselining effort will result in shaping of the regulatory playing field. Impacting the shape of that field are the budget cuts, performance-based rules, NRC's reduced materials regulatory workload, and how we, the NRC and Agreement States, regulate the medical use of radioactive material.

The challenge, as I see it, is for NRC and the Agreement States to pool our resources, work cooperatively to create on paper, by the fall of 1996, the future regulatory playing field. We must then continue to pool our

31

resources and work cooperatively to create that future in reality.

Otherwise, the Agreement States and the NRC will be in the old, comfortable position of the Agreement States reacting to NRC initiatives and the full benefit of the resources of the NRC and Agreement States working together will not be realized. NRC and the Agreement States must be willing to work outside our comfort zones.

How, then, can we work together to create our future? I suggest another working group or similar approach that will look to the needs of NRC in view of NRC's baselining activities and the needs of the Agreement States who regulate, among others, machine-produced radiation and naturally occurring accelerator-produced radionuclides. Objectives of this group would be to ensure that the regulatory playing field of the future is fair to the Agreement States and to the NRC and that it will not adversely impact the varied needs of the states.

Thank you.

CHAIRMAN JACKSON: Thank you very much, Mr. Hill.

Let me make a couple of comments and let me ask a few questions, and then I'll allow my fellow commissioners to do so, also.

If I listen carefully to much of what each of the four of you have said, one would get the impression that the

32

Agreement States are feeling like second class citizens and that you would not like to continue to be treated as such.

And so it strikes me that the overarching question is how to bring your state expertise and needs to bear in a consistent and comprehensive way in our regulatory processes; in particular, those parts of it that affect you the most.

And it also strikes me that you've also spoken or interwoven through much of what you've said are the ways out of it, of what you might feel to be this second class citizenship. And so I guess I'd like to kind of walk through some things that struck me and get your reactions to those. Then I will speak to a couple of the points that different ones of you, but particularly Mr. Hill, raised.

I think interaction and communication is what I heard. Now, my understanding is that, and particularly up-front interaction in the areas that are of greatest concern and impact to the Agreement States, and I know that there are various working groups and, in particular, with respect to the on-going implementation of a new adequacy and compatibility policy statement. And I guess I'd like to get some assessment from you of how well that is working, since you, in fact, spoke to difficulties that some of the

compatibility requirements pose for you. So I'd like to understand that a little bit better.

33

MR. STRONG: Let me just start, but nobody's shy.

CHAIRMAN JACKSON: That's clear.

MR. STRONG: You have an institution that, within certain limits, goes on. Staff does not change, the same people that we would deal with over a period of years. It doesn't change very much. Every year, there's a new guy that sits at this table to give this briefing to you.

And I suppose, within certain limits, our organization doesn't change an awful lot, but I think that it's more difficult for us to relate back to you consistently, and we don't relate to you very often -- once a year. Maybe we can get you to come to a meeting and speak to us or something like that.

CHAIRMAN JACKSON: All you have to do is invite me.

MR. STRONG: And we have and we will and you'll not be off the hook for that.

The consistency -- I think we feel like we're at a disadvantage, in order to deal with you consistently, because our group changes, and I'm not sure what to do about that. Tom's idea of a new working group -- I don't know if we need another committee. I'm not sure we know what else to propose, but another committee on top of what we are doing now?

Something that brings permanence, something that

34

is really effective so that we're sure that you hear us and what we're concerned about is -- maybe we can explore that, that we can figure something out right here, and I don't know where Bob and Richard might want to go with that.

MR. RATLIFF: I feel that your basic question is are the working groups actually being successful, and I think the answer is yes. I know the IMPEP group has really worked well. It's bringing the state counterpart in with the NRC. It helps the state members because they'll know what to expect when they're reviewed. I think overall, that's going to be a real successful effort.

Having the states have four representatives on the management review board is going to really help because that'll, I think, give the state who's in the hot seat -- at least know that one of their compatriots is out there, and I think we'll hold them to an equally or higher standard than you will, which is good, and I think overall that'll help.

The adequacy and compatibility -- when I asked for volunteers it surprised me that I got people. That's going to be the hardest one, going through all of the NRC rules and determining what division of compatibility has got to be the most onerous job that anybody's taking on, and those three people I think will do well.

So I think we've really improved relations. It's just certain areas that we get into I think where we feel

35

uncomfortable and certain things where, like you said, all of a sudden we feel that we're going along as regulatory partners and all of a sudden we're not invited to the dance; we're left at home. I think that's where I see us coming from.

CHAIRMAN JACKSON: Another area that it strikes me is ripe for helping to address some of your concerns is in what I would call specificity of assessment. You talked about industrial radiography and you gave a good assessment of the historical problems, where you are now, et cetera.

I think that from my perspective, what's helpful in being able to address where there may be difficulties is to try to pin down, as much as possible, where they are, where the difficulties are, and what could address them. So I would just encourage you along the line of what I'll call specificity in assessment.

A third area which all of you have alluded to is the one of resource commitment. I think it's important when the Organization of Agreement States is assessing its needs or, conversely, if one is looking at what our program requires of you and what you thereby need, to understand from a resource commitment point of view what is really needed, but that includes what will things really cost, and then to have discussions about what is actually available.

Now, I know about the issue having to do with the

36

training and travel funding for states, and I'm not going to speak to that specifically today because that is under

active consideration and will be under active consideration with discussions with your organization. But one has a federal agency, which is a federal agency, but that is funded through licensee fees, and one has an Agreement States program where, by definition, those who are regulated in those states are not licensees of the NRC.

And so the question becomes what are the real needs and how and who is going to pay for them, or how is that going to be partnered, particularly when in our appropriations legislation certain areas, including the Agreement States program, gets singled out for criticism.

So that is why the Commission is considering this as part of the overall strategic assessment, because it has to be considered within the broader context. It's not a simple matter of continuing or not continuing, but the issue becomes how does it work within the broader context?

You mentioned cost-benefit, and you criticized how the NRC does it. I think it would be very helpful, from an Agreement States perspective, that you help to do some of that calculation.

Now, the difficulty is going to be the variability from state to state. But again, because you are the Agreement States organization, there may be a way that you

37

could contribute in terms of laying out options or bounds in that process.

And then let me just march down the list that Mr. Hill talked about. The budget cuts -- we are facing budget cuts, and that's not likely to go away, but that is also why my earlier comments about what things cost versus what makes sense to do and who's going to pay or how is it partnered is part of a larger discussion.

You mentioned performance-based rules and again, I think that is one that's ripe for continued discussion and intense interaction.

You mentioned rebaselining and human resource assessment and you made what I might consider to be some pejorative comments, but I didn't take them as such because I don't think that it's a question of necessarily leaning one way or the other. It's a question of looking at where our overall programs are going and what is on our plate, what looks like it's coming onto our plate, and deciding then how do we address that, what our human resource needs are. And it's not something that's meant to cut any given player out of the game because the NRC has many stakeholders in the process, and there are many who are concerned about the regulatory playing field, as it were.

The National Academy of Sciences report and how we're going to interact and decide how to react to that

38

report is not something that's going to be done in a precipitous manner, and it obviously is something that requires intense interaction with the states. That would be all the states, because they would be affected.

So all I ask you to do is not to prejudge what you think the outcome is going to be, because I haven't prejudged it and I don't think obviously my fellow commissioners have prejudged that.

And so again I go back to saying I think we all have to operate in good faith, but the greater the degree of specificity in assessment and recommendation and process you can bring to us, the greater the possibility of making progress on the issues that are of concern to you.

I'll make some other comments later but I'd like to give Commissioner Rogers and then Commissioner Dicus a chance to pose any questions or comments they'd like.

COMMISSIONER ROGERS: Well, I think your comments have been very interesting. They are not entirely new, of course. Some of these are issues that have been around for a long time and we've been working on but they are very difficult ones sometimes.

I'd just pick up on what the Chairman has said with respect to the specificity. I think that in trying to find ways to alleviate some of the shortcomings of our interactions that we really do need help on this in how to

39

do it because I think that we can sit here and think of things in generalities but it is really a specific fix of some sort that ultimately has to come about. And I think your contributions to us in that regard could be very, very helpful.

I think this is not an area where one wants to be singlemindedly too creative. I think it has to be a joint

kind of activity, that we have to find something that meets your needs and our needs at the same time.

And that brings me back to the relationship that we have, which is a very peculiar one in many ways. It is one in which you are given responsibility for a big piece of what NRC ordinarily does and yet somehow we are still held accountable for what you do.

That became very clear to commissioners some years ago when a congressional committee began to be very unhappy with the way we dealt with the Agreement States program and held us very personally accountable for any kind of shortcomings that they could perceive in what happened in any of the Agreement States. And it was a very uncomfortable period for the Commission. We were quite thoroughly beaten up, I think somewhat unjustly but not entirely so.

And it illustrated the very complicated relationship that we have, where we, in fact, hand over, through the Agreement States program, responsibility to you and yet whatever happens in the Agreement States that involves radioactive areas that have a health consequence, we will be held accountable for them, and personally accountable for them. It's something that you have it but we haven't given up our responsibility.

And it's a relationship that can only work, I think, through very close interaction and very close communication because I think otherwise, we're bound to see the same kind of problems arise time and time again in the future, where something happens in an Agreement State and NRC is held accountable for it and NRC says, "But we really aren't directly involved there," and that doesn't satisfy anybody when we have to say that in a congressional hearing. And so that means that very strong communication is quite important.

And what I hear is the pain of this relationship, in a certain sense, that it is a peculiar one. I don't think -- I would characterize your perception a little bit differently from the Chairman's. I don't think you see yourselves so much second class citizens --

CHAIRMAN JACKSON: No, being treated that way, not that they are.

COMMISSIONER ROGERS: Well, or being treated that way, but being treated in a way that everybody else is being treated, whereas, in fact, you have a considerable additional responsibility.

And so what you're asking for is a recognition of that special status that you have that is different from non-Agreement States. And it seems to me that that's where part of the problem arises, in how to do that.

I think that we can be much more communicative with you than we have been, but I know that from time to time there have been legal issues raised with respect to how communicative we could be with you on, for instance, rulemaking.

And I don't know. I don't want to put Mr. Malsch on the spot but Mr. Malsch, I wonder if you could comment in any way easily on where the limitations might arise with respect to the Commission recognizing input from the Agreement States very early on in a rulemaking, where we haven't had a chance to go public with it to everybody.

MR. MALSCH: I think at an early stage there really are very few limitations. Offhand, I can think of none. I mean, the analogy to rulemaking is legislation, which is pretty much an open process. For informal rulemaking, it is an open process. It's not a very structured process. There's no prohibitions on ex parte communications or separation of functions.

So especially early on, I think there are very few legal limitations.

COMMISSIONER ROGERS: Do you think that we've been too cautious in eliciting responses from the Agreement States in rulemaking?

MR. MALSCH: Well, if we have been reluctant because of legal considerations, I think we may have been too cautious, but I think maybe other considerations may have been driving it, also. But from a legal standpoint, there are very few legal limitations associated with early interaction in rulemaking.

COMMISSIONER ROGERS: Well, I think that we have to keep that very much in mind.

I wonder -- there are some specific questions. One is, Mr. Quillin, you talked about this problem and the Chairman touched on it, as well, of more realistic assessment of how much time it takes to do an analysis or to comply with an NRC regulation.

Do you have any thoughts on how we can get better data in this area? It seems to be a recurring problem all the time, that we're accused of underestimating the costs of some kind of new regulation. And yet I'm sure our folks try to do the best they can.

I wonder if there's any way that you could be specifically helpful to us in creating a database that's more valid.

43

MR. QUILLIN: I don't think it's necessarily creating a database so much as it's creating a process where you can gather the information for the database.

I think one of the problems is that once you have a rulemaking in progress, you get in a time frame and you don't have much time to operate in to gather that information. So I think estimates are made which may or may not be valid.

I think there needs to be a way that you can go outside the system you have now to gather that information and to try to analyze it and present it in a more thorough basis.

So I think it's the system and the process that needs to be looked at.

COMMISSIONER ROGERS: Well, maybe we can't come to something right here at the table but I do think this is something that we ought to attack and see if can't find a way, some new mechanisms that produce more satisfactory results.

I think perhaps we've been using the same computer program that the IRS uses to calculate how long it takes to make your income tax, and that doesn't seem to work very well.

I think I'll pass.

CHAIRMAN JACKSON: Thank you. Commissioner Dicus?

44

COMMISSIONER DICUS: Thank you, Chairman Jackson.

I find myself in this remarkably unique position, having sat on both sides of this table in these kinds of discussions. And I have a proximity, a close proximity, both in time as well as knowledge to the issues that are being discussed.

And for that reason, I really don't have any comments and I'd have to say at this point in time, at least not yet, any questions.

CHAIRMAN JACKSON: Okay.

Let me ask you two specific questions and then, if we're done, I have some closing remarks.

As you know, the Commission continues to evaluate the extent to which our low level waste regulatory program should be reduced, if at all. Do the Agreement States have any belief that we should cut the program, or have you thought about that? And if so, which activities would be candidates for reduction?

MR. STRONG: If you look at how many sites you license, then it would seem to me that you could reduce the amount of effort, the number of FTEs that you have. And from the looks of the national picture, there are going to be very few new licensed low level waste disposal sites, it would seem.

But at some level, it does to me, to the State of

45

Washington, to the Northwest Compact -- I wear two hats: I'm the chair of the Northwest Compact -- that there ought to be somebody with the resources, with the capability to continue to look at this process from a technical basis, from a research basis, which the states or the compacts really are not prepared to do.

I don't know where to draw that line. I can't be more specific than that, but I'm willing to sit down and let's take a look at exactly the process that we would have to enter into. But for the NRC to keep a staff in anticipation of licensing the next low level radioactive waste disposal site that comes on line, that's really not -- you don't need to spend your FTEs in that area.

MR. RATLIFF: I think it parallels one of the other areas you touched on -- the fees and who pays for it. It's an area that could help NRC if you have an application for a waste site. It obviously helps the NRC reactor

licensees who have to get rid of their low level waste, and yet it may be that you have no direct licensee to charge these costs to.

I think it's one of those areas that I think it's been beneficial because going through this process, you're able to provide some assistance to the states, who are on the forefront, having to go through and combat the multiple groups who have an agenda that's not based on safety but is

46

based on we don't want reactors, we don't want waste.

So we run into real problems there. And I think your data, working with the data that we develop on a site-specific basis, is beneficial.

CHAIRMAN JACKSON: Any other comments?

MR. QUILLIN: Yes. I have the benefit of having served on two different compacts -- the Midwest Compact and now the Rocky Mountain Compact. And in neither of those terms, so to speak, did I really see any benefit that the Nuclear Regulatory Commission provided to the compact itself. There was some benefit that was provided through the Department of Energy activities but not through the NRC activities.

So one of the problems, I would say, is you need to look at the customers you have for this program and whether you're providing service to these different types of customers, whether it be a compact, whether it be a state that's developing a site and trying to establish criteria for siting. Whatever it is, but you need to look at your customers and see are your services focussed towards your customers?

CHAIRMAN JACKSON: Okay. Mr. Hill?

MR. HILL: No comments.

CHAIRMAN JACKSON: Let me ask you another question. Now, this, as I mentioned earlier, will be part

47

of a longer and on-going assessment, but I do invite any views or comments you might have on the report of the Institute of Medicine on the NRC's regulation of the use of radioactive material in medicine.

Do you have any overarching comments you'd like to make at this time?

MR. QUILLIN: I can say that I serve on the ACMUI, so we've already made our comments.

MR. STRONG: Let me go, Richard. Then you can deal with the specifics.

I think some interpretation of the report would say that some physicians want NRC out of the business altogether of regulating the radioactive materials that are used in nuclear medicine. And I think that that probably goes too far. I don't think that we would look at it that way.

And so maybe the Nuclear Regulatory Commission should not be practicing medicine, but they should not be out of the business of regulating the materials that are there. In Agreement States we are not going to stop doing that. In non-Agreement States, I wouldn't think that you should bail out altogether.

I don't know if that's the kind of dichotomy you're looking at, but it's still radioactive materials. It's still out there. There's still a public health and

48

safety issue that is there with regard to the use, not in the practice of medicine but in the protection of the public health from the radioactive materials, from exposure.

MR. RATLIFF: I feel this is one of the areas where it was more politically driven as the NRC medical rules developed and the Congressman Synar hearings, where they were looking at past instances and really a relatively small percentage of misadministrations occurring, and yet bringing that to the forefront. And I understand in each of our states we're before legislative committees where they're just as hot, just as intense.

But I think one of the problems is that the rules went too far. I know when I sat here last year and the year before as president-elect, we recommended that the QM rule was too strict. The regulation of nuclear medicine really had to look at a balance.

We knew the states did not have resources to review large quality management plans. We felt that that was a waste. We knew NRC had to go out on contract, and even the contractors, after they reviewed them, found most of them were inadequate. So there was something wrong with the system.

And my suggestion then was that we really look at concentrating on health and safety. What rule would be more effective in eliminating misadministrations, making sure

49

they're reported but not be so burdensome on the licensees and the states? I think that's where we're going to have to go.

CHAIRMAN JACKSON: Okay.

MR. HILL: You asked for overarching ideas and I don't think I can add anything to what Terry and Richard just said. It seems like that summarized it pretty well from the Agreement States perspective.

CHAIRMAN JACKSON: Mr. Ratliff, you mentioned medical administrations. In looking at it, it appears that the number of events reported by Agreement States appears to be significantly fewer than that reported by the NRC. Do you have any thoughts as to the source of that difference?

MR. RATLIFF: I think part of it is randomness because we'll have certain incidents that, regardless of how well we've regulated a particular licensee, they'll have an individual who makes a major mistake. But I think partially the states, through the medical boards -- we regulate the medical community; we do x-ray inspections; we inspect NORM. We have much closer connections with the medical facilities, and I think that's beneficial in the long run.

CHAIRMAN JACKSON: Okay.

Commissioner Rogers?

COMMISSIONER ROGERS: No, I don't have anything.

CHAIRMAN JACKSON: Commissioner Dicus?

50

COMMISSIONER DICUS: (Shakes head.)

CHAIRMAN JACKSON: Well, Mr. Strong, the Commission would like to thank you and your colleagues for an excellent summary of your views of the Agreement State program. The Commission is particularly pleased to hear that you intend to conduct your future annual meetings at NRC headquarters each fall in order to facilitate the kind of interaction and communication we've been talking about with the NRC staff, as well as with the members of the Commission.

And the Commission encourages you and the NRC staff to continue to work together in order to successfully carry out this very important program.

And I would just, in closing, like to bring your attention back to four points that seem to have come out today. They are, first, as both Commissioner Rogers and I have spoken of, a mechanism for interaction generally, whether there are improved mechanisms that might exist, as well as mechanisms for earlier input to regulation and rulemaking.

Secondly, it is very important that there be specificity in assessment and recommendations coming out of any assessments that are made, that are as specific as possible.

Third, that you work and help us to work to

51

understand better resource commitments that would be involved with what your needs are but also what you think resource commitments or costs would be relative to any regulations we might be promulgating.

And related to that, then, is the fourth, which is I think you have a role to play in developing cost-benefits options and bounding, given the variability of the various state programs.

So again I thank you very much for a thorough briefing, and if there are no other comments, we're adjourned.

[Whereupon, at 11:17 a.m., the briefing was adjourned.]