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Development for Uranium Recovery Industry

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BOARD OF COMMISSIONERS

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PUBLIC MEETING ON RULEMAKING AND GUIDANCE  
DEVELOPMENT FOR URANIUM RECOVERY INDUSTRY

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TUESDAY, APRIL 10, 2001

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ROCKVILLE, MARYLAND

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The Commission met at the Nuclear Regulatory Commission, in The Secretary's Commission Meeting Room, White Flint One, 11555 Rockville Pike, at 10:30 a.m., Richard A. Meserve, Chairman, presiding.

PRESENT:

RICHARD A. MESERVE	Chairman
NILS J. DIAZ	Commissioner
GRETTA DICUS	Commissioner
EDWARD McGAFFIGAN, JR.	Commissioner
JEFFREY S. MERRIFIELD	Commissioner
ANNETTE L. VIETTI-COOK	Secretary
KAREN D. CYR, ESQ.	General Counsel

ALSO PRESENT:

JACK GERARD, President and CEO, National Mining Association  
ALLEN HOWE, Division of Industrial and Medical Nuclear Safety, NMSS  
MICHAEL LAYTON, Fuel Cycle Licensing Branch, NMSS  
FLETCHER NEWTON, President and CEO, Power Resources, Inc.  
CARL PAPERIELLO, Deputy EDO  
KATIE SWEENEY, ESQ., Associate General Counsel, National Mining Association  
ANTHONY THOMPSON, ESQ., Shaw, Pittman, Potts & Trowbridge  
MARTIN VIRGILIO, Director, NMSS  
MICHAEL WEBER, Director, Division of Fuel Cycle Safety and Safeguards, NMSS

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P-R-O-C-E-E-D-I-N-G-S  
(10:29 a.m.)

CHAIRMAN MESERVE: Good morning. Actually, it's reasonably cool in here today. I was going to make a -- repeat a crack from Commissioner Merrifield yesterday about how we put our witnesses in the hot seat. It turns out the air conditioning has failed in this building, but with the fans, and so forth, we're doing reasonably well. We had a hot session yesterday, and I mean in terms of the room temperature.

(Laughter.)

The Commission, over the past year, has reached a variety of decisions relating to the uranium and thorium recovery industry, and we had contemplated a rulemaking to establish a new Part 41 to cover issues relating to that industry.

We have received communications from our licensees, and, as you know, there is a SECY paper that has been presented to us that provides a variety of different options as to whether or not and how we might proceed with a rulemaking.

Our session today is to deal with that issue, in part. We also have continuing concerns about issues relating to dual regulation and the fact that there are -- these types of licensees confront dual regulation both from the Environmental Protection Agency in the NRC and also from the states in certain areas.

And we have been concerned about ways in which some of that is maybe legally required. We're concerned about ways in which to minimize the impact of dual regulation. There are issues relating to fees that I know that are important to these licensees and for good reason, and there are a variety of other issues that are outgrowths of the quite active Commission work in the policy areas.

So we very much look forward to the sessions this morning to deal with that. Our first panel consists of Mr. Tony Thompson from Shaw Pittman, Ms. Katie Sweeney from NMA, Mr. Jack Gerard, who is President and CEO of NMA, and Mr. Fletcher Newton. We make you welcome. We much appreciate your being with us today. Why don't we proceed.

MR. GERARD: Great. Well, thank you, Mr. Chairman and members of the Commission. We appreciate the opportunity to be here today.

As mentioned earlier, I'm Jack Gerard, the new President and CEO of the National Mining Association. I've been in this capacity for probably a sum total of about three months now. So, of course, I'm a seasoned expert now on the uranium issue. We do appreciate the opportunity to be here today, and we appreciate the time that you've all taken to hear some of our concerns and let us express some of our views.

I will be very brief today and try to turn it over to some of the experts. But before beginning, if I may, let me just introduce the group that's with me. Obviously, Katie Sweeney, who is our Associate General Counsel at the National Mining Association, will give part of the presentation; Tony Thompson, whom many of you I think know from other work here with the Commission; and then, obviously, Fletcher Newton, who is the President and CEO of Power Resources, who will be part of that presentation.

And if we may, Mr. Chairman, we have some other uranium recovery licensees in the group, about a half a dozen. If we could quickly introduce them, if that is all right, a quick introduction --

CHAIRMAN MESERVE: Quick introduction. Go ahead.

MR. GERARD: -- we'd appreciate it.

(Whereupon, the uranium recovery licensees introduced themselves.)

MR. GERARD: Thank you, Mr. Chairman.

CHAIRMAN MESERVE: You have about the whole industry here.

MR. GERARD: That's right. We've got them all here. The positive is there are a few of them, in the sense for introductions. The down side is, obviously, there's very few of them left in terms of uranium production in this country.

Very briefly, just let me say again thank you very much for hosting us today. As you know, at least from my perspective, we have perhaps a unique opportunity in this country now as we have the country focus on energy issues and policy debates.

And as we move forward now to look at the national energy policy from our perspective at the National Mining Association, not only representing major users in the terms of hard rock consumers, copper, silver, gold, and others, but producers in the sense of the coal producers in the country. And a key part of our group, obviously, is the uranium producers. And so we appreciate your willingness to take some time today.

With that, why don't I turn it over to Katie for part of our presentation.

MS. SWEENEY: Okay. As Chairman Meserve just said, and we all know, the staff developed a SECY paper presenting three alternatives, which include the National Materials Program pilot, continuing with the Part 41 rulemaking, or discontinuing the Part 41 rulemaking.

National Mining Association's Uranium Committee met to discuss these options, and essentially we have some serious concerns with option one. We didn't dismiss it out of hand, especially because we have in the past asked to be involved early in scoping of regulations and guidance documents. But we think in this case the scoping has already happened.

There were scoping meetings on Part 41 in Denver, Casper, Albuquerque, and Austin, I think. States have submitted comments on the draft rulemaking plan, and we've had with the Commission a pretty thorough airing of NMA's white paper issues. So we don't think we need to have another scoping process here.

In addition, we have concerns about the cost and the timing of the pilot program. Because it is a new process, I don't think that anybody is sure how much it will cost or how long it will take. And then, what if it fails? Then, we would have to pay for some other procedure to go ahead, be it rulemaking or updating of guidance.

We also have concerns about whether the people involved would have the expertise needed to deal with these fairly complex legal and technical issues, issues that I think it would be probably quite difficult to get consensus on. People didn't understand those issues well.

For option two, continuing with the Part 41 rulemaking, there are certainly some advantages to continuing with the rulemaking, I think one of the most important of which would be codification of the performance-based license concept.

Also, rulemaking does provide additional certainty over guidance, and I think that we -- that the industry and NRC have learned a lot over the past 20-odd years dealing with the program, and we've learned things that we could incorporate into a Part 41 rulemaking.

NMA itself, at the scoping meeting in Denver, provided kind of a laundry list of issues that could be addressed in the Part 41 rulemaking, from changes in the definition of byproduct material to small changes for some of the criterion to Appendix A.

Despite the advantages of continuing with the Part 41 rulemaking, we can't support it at this time. We looked at the SECY paper discussion of resources where it's estimated that proceeding with the rulemaking would cost about \$300,000 over a three-year period. That's a lot of money and a lot of time, and the industry just can't afford it at this juncture.

Which brings us to option three, which is to discontinue the Part 41 rulemaking. That's NMA's preferred approach. We would like to go forward with updating the guidance documents. This option, we noted, would cost approximately \$100,000, but in the SECY paper there was no discussion of the timeframe involved. And I think we'd like to hear a little more hopefully from the staff on what that might entail.

NMA is interested in providing information that we think might be of some help in updating the guidance documents. But before I get into that, I'd like to note that we recently became aware of an

NRC document, a regulatory information summary, which was RIS 2000-23. That document indicates that the alternate feed guidance and the non-11(e)(2) guidance have already been updated to some degree.

We're not certain what the status of that document is or those revisions, because none of us officially received a copy of the document from NRC. So to the extent that NRC intends to move forward with that process, we'd like the opportunity to comment on those papers and meet with staff to discuss our concerns, because we did review that RIS paper and we do not think that the revisions there reflect the Commission's direction on the non-11(e)(2) and alternate feed guidance.

With updating the guidance documents, NMA will provide the NRC with information pertinent to updating the non-11(e)(2) guidance, and hopefully point NRC to some existing information that will help address the listed hazardous waste concern relating to the alternate feed guidance.

On the non-11(e)(2) guidance, NMA and the Fuel Cycle Facility Forum met last month and decided to develop generic criteria for acceptance of non-11(e)(2) material for disposal and tailings piles. Dave Culberson from the Fuel Cycle Facility Forum is here today in the audience if you have any questions about their participation in that effort.

We think it makes sense for these two groups to get together to do this, because we have the technical information on the suitable -- the candidate sites and the candidate materials. And we would try to develop criteria that ensure no greater health and safety concerns will be presented by the added materials, and also the criteria will identify potential jurisdictional hurdles that industry will have to address.

On the alternate feed guidance, we know that NRC has expressed concerns about listed hazardous waste and feed stock and how to ensure that they are not run through the mill. We know there's concerns about dual jurisdiction with EPA, and we believe the staff should review the protocol that the International Uranium Corporation has developed in conjunction with the State of Utah to address those types of concerns.

And Dave Frydenlund of International Uranium is actually here in the audience if you have questions about that protocol.

And now I will turn it over to Tony to deal with the dual regulation issues.

MR. THOMPSON: Yes. I'm going to talk about -- just briefly about the non-agreement state/NRC interface on the concurrent jurisdiction issue, and then talk a little bit about the jurisdictional issues and dual regulation issues related to ISL mining in particular.

There are some indications at least one non-agreement state does not believe that the Commission's decision on preemption with respect to non-11(e)(2) byproduct material is effective at this time. There are some indications that they believe that it is intended that that will be addressed in a Part 41 rulemaking proceeding.

NMA believes that our reading of the decision by the Commission was that the Commission changed -- issued a legal interpretation of the Atomic Energy Act, as amended by the Mill Tailings Act, and that that is, in effect, in effect now. And so it might be useful to clarify the status with relevant non-agreement states, such as New Mexico, Wyoming.

Now, turning to the dual regulation and the overlapping regulation in the in situ leach area, we understand, and we know the Commission understands, that there is some overlapping regulation as a result of the EPA UIC program. Indeed, before any kind of ISL mining can proceed, the proposed -- the applicant has to have both a UIC permit and an aquifer exemption, from EPA or from the appropriate delegated state.

The aquifer exemption essentially says that a part of an aquifer -- and it's a very clearly defined part of an aquifer -- can be used for mining purposes because it contains recoverable minerals. You can't drink the water in that portion of the aquifer prior to mining because of the radionuclide content. You can have radionuclide radon levels of hundreds of millions -- or millions of picocuries per liter.

And you can't drink it after restoration is complete either because you still have high levels of radium, perhaps uranium, and certainly radon, in those restored aquifer areas. So you have to -- there is no way to avoid the UIC permitting and aquifer exemption process. And, certainly, NMA is not suggesting that it should.

Recognizing, then, that we do have some EPA controls on these kinds of issues, EPA doesn't require restoration. But if your activities in an exempted aquifer are going to have an adverse impact on some non-exempted portion of the aquifer, then EPA can require you to come in and clean it up.

The second sort of overlapping area is, of course, with NRC and the states. Some of the states have very extensive ISL regulatory programs. In fact, they are much -- delegated states, for example, have UIC authority from EPA, have regulatory programs that are specifically designed to address ISL operations.

They go beyond just the delegated UIC authority of EPA, and, indeed, Wyoming and Nebraska are two such states. And those state regulations do require restoration of wellfields.

The Commission has suggested that the staff look at either MOUs or reliance on the state ISL program. This was discussed back at Riverton about five or six years ago, and the -- '97, I guess, okay -- and the staff was at that time looking at developing a chapter in NRC inspection manual to see if they could look at a particular state and look at what the state did to assess the regulatory issues for ISL mining. If the state covered all the issues NRC had to cover, then NRC could rely on the state. If there were deficiencies, they would take a look at it. That somehow went by the boards.

It's sort of like a standard review plan-like type of review that we're suggesting here. And indeed, and in fact, if you actually look at the draft standard review plan for ISL, NRC's draft, you'll -- it virtually mirrors the Wyoming regulatory process for ISL operations.

So it would seem to us that there is no reason why, as in other areas, for example, historic preservation, issues like that where NRC lets other agencies sort of, in effect, do the work that they are closest to, have the most expertise in, NRC will then make sure its own requirements are satisfied, but will rely on the findings of the other agency, whether it's a federal agency -- and there's no reason why they can't rely on a state agency, in our view here.

The jurisdictional issues associated with ISL wellfields -- it is well-known I'm sure to the Commission at this point that in the view of NMA the whole set of complex legal and technical issues began when NRC asserted jurisdiction over the wellfields and ignoring, in effect, certain definitional things, such as licensable source material.

It has to be over .05 percent source material, or there shall be no licenses -- a mandatory provision, in our view, and in the view of the NRC General Counsel back in 1964, I guess.

Now, by changing the division between calling process wastes from ISL 11(e)(2) and now saying that all waste from ISL are 11(e)(2) has created additional regulatory problems and is going to cause all kinds of difficult legal gyrations.

It immediately puts licensees with NPDS permits in violation of those permits and in violation of the NPDS regulations, which do allow the discharge of restoration fluids if you meet the NPDS limits down the stream but which do not allow the discharge of process waste waters even if you meet the NPDS limits down the stream.

So by declaring restoration fluids and restoration waste as byproduct material, you have now, in effect, ex post facto if you will, you may have created liability for stuff that's gone down the creek that was under an NPDS permit and now it's 11(e)(2) byproduct material. And, indeed, at least one or two licensees have received letters from the staff suggesting that they have to go and evaluate whether they have to go down the creek and clean all of this up, because it's now, ex post facto, 11(e)(2) byproduct material.

The distinction between restoration fluids and process fluids is not an artificial one, as sort of is suggested in some of the SECY papers, because it has existed in the NPDS rule since the middle 1980s. One of the suggestions that the restoration fluids -- although you are not -- when you are

restoring, you are not producing uranium primarily for the source material content. You are pumping water to restore the ore body.

Now what you have when you've declared all of this as byproduct material, you're saying it's an integrated hole -- the restoration and the ISL. That was exactly the same circumstance as in 1978 before the definition of byproduct material came into being.

A mill tailings pile is part of an integrated hole with a mill, yet back in 1978 NRC said, "We don't have authority to regulate the tailings because it doesn't contain licensable levels of source material." And that's where the definition of byproduct material came from.

So by declaring restoration fluids and wastes as byproduct material, it seems to us you're violating the definition of byproduct material, which is producing primarily for the source material content. You are, in effect, creating -- you are, in effect, saying that the under -- the mine workings which are in the regulations, defined not to be 11(e)(2) byproduct material, are effectively byproduct material until restoration is completed.

So you are restoring something that isn't 11(e)(2) byproduct material, and the waste therefrom you're now saying is 11(e)(2). It's just gotten so that we -- I don't think we know which way we're coming and which way we're going. The depleted ore body is one of those problems.

So our suggestion for moving forward on this restoration issue is to go back to the distinction between restoration fluids being not 11(e)(2) byproduct material, and presuming that NRC is going to continue to operate in the wellfields, treating the waste from processing as byproduct material.

MS. SWENEY: Fletcher, that brings us to you.

MR. FLETCHER: Mr. Chairman, I want to thank you and the other members of the Commission for having this meeting today. I know that you, and particularly your staffs, have put a lot of time into this, and we appreciate the effort.

I apologize for being a little late this morning. I think I hit every single traffic light and every single traffic jam between here and the center of town.

As we discussed earlier, I'm the President of Power Resources. I'm also the President of Crowe-Butte Resources. And between these two companies we are the largest producers of uranium in the United States. We produce more uranium together than anyone else. Crowe-Butte operates an in situ leach facility in Nebraska. Power Resources operates an in situ leach facility in Wyoming.

And what I wanted to do briefly is just give you a quick summary of where the industry stands right now domestically and how the fee structure as it currently is affects us, what impact that has on us, and then hopefully provide some solutions from a policy standpoint that can give us something to work towards going forward.

We use technology solution mining to extract uranium from ore bodies, and this is, I think without question, the most environmentally friendly, the safest, and the most efficient means of extracting uranium. We simply use water that occurs naturally together with the ore, and we pump that water through a system that extracts the uranium.

So as Tony pointed out, the water that exists in the sandstone where the ore occurs naturally has elevated levels of radionuclides, which makes the water unusable for drinking which is why we were able to get an aquifer exemption from the EPA in the first place. This is the natural state of things.

As we process the water, we naturally change the level of certain constituents in the water, and because of that, both in Wyoming and Nebraska, both states have extremely rigorous standards that we need to follow in order to comply with their standards and their definitions of restoration.

The current state I think, if you will see the next slide, I want to talk a little bit about the state of the industry, both with regards to the price of U308 right now as well as the production. The price of uranium, natural uranium, U308, is lower today than it has ever been. In real dollars, it's at an absolute historical low. It was a little lower a few months ago. The spot market price has come back. But the current spot market price is \$8.20, \$8.25. The long-term spot market price -- or the long-term price is quoted currently at \$9.75.

At the same time, production of uranium in the United States has also dropped to its lowest point ever. Last year's production was about 3.7 million pounds. Of that, we produced about 1.7 million pounds between our two operations -- 800,000 pounds in Nebraska and 900,000 pounds in Wyoming.

As I said, the solution mining industry is extremely efficient. And we are trying to be more efficient every day. Unfortunately, the regulatory structure of fees is imposing a burden on us, a cost burden, that we're finding to be simply one that we can't continue to bear.

I think if you'll see the next slide you'll note that, as I said, the price is currently around \$8 a pound. Our fear is that, given the current fee structure, this is becoming a burden for us that will simply make the continued operation of our mines not possible.

The graph that you see as the next slide is just a quick summary of how prices have declined since 1996. At that time, they jumped up to a little bit over \$16 a pound, and they've consistently declined, as I said, to the level now which is around \$8.20.

The next chart is simply a numerical summary of what production has been in the United States since 1966. And as I said, last year's production was 3.7 -- almost 3.8 million pounds. The following chart is simply a breakdown of that production by quarter. And, again, you can see how that has decreased.

I should emphasize that ISL mining in the United States accounts for the vast majority of uranium production. There is still a small amount of production that comes from operations that are in restoration in Wyoming and New Mexico as well.

Now, we certainly understand -- and you can see in the next chart -- we certainly understand that the NRC is mandated to recover its fees. And we understand that the Commission is proposing a revised fee schedule. We've all read that, and we certainly appreciate the efforts that the Commission has made to reduce the annual fees next year.

Unfortunately, the hourly fees -- and these are the fees that are charged to us for the project managers as well as for the hourly fees that we incur for specific work directed at specific activities at our sites -- that fee is proposed to go up. And it's that fee that is really perhaps the biggest problem for us, particularly the project manager fees, because this is something over which we have absolutely no control.

We can't anticipate that. We have no idea what goes into that. And although the work that's been done is certainly I think done in good conscious, it's something that when we have to pay \$140 or \$144 an hour, it becomes a prohibitive expense for us.

Just so you understand what these fees represent, I wanted to give you a quick analysis of how they affect operations. For example, for an operating ISL facility -- and the figures that are quoted here apply to the Smith Ranch facility, which is operated by Rio Algom Mining in Wyoming. Our costs and the impact of these fees on us would be similar.

Rio Algom, as I said, is the largest single operating facility currently in the United States, but you can see that the fees represent a significant portion of the total payroll. They represent a significant portion of the actual administrative costs for the site. They represent, in the case of Rio Algom, 25 cents per pound of their total costs. For us at Crowe-Butte and at Highland, that cost is higher, close to 50 cents per pound.

And you can see that it represents -- and this is I think maybe the most important point of all -- 7.8 -- almost eight full-time workers at that site. At a time when we've been forced to lay people off, I had to lay off last year 10 people. We closed our office in Casper. Again, the fees are imposing a burden on us, which is becoming simply cost prohibitive.

For a tailings site, in reclamation, you can see that, again, the fees represent a significant portion of their operating costs. And with the next slide you can see that for a mill -- we've got them reversed, actually, or I've got mine reversed, but the point here is that the fees represent a

significant portion of the operating costs, both for a tailings site as well as for a mill.

If we go to the next slide, and I think you've probably all seen this chart, I sent this to you in a letter several months ago. And the following two slides are, again, a summary simply comparing price to the number of employees, the pounds produced, and how these have affected us.

The last slide here, which is one more I think after this, this particular slide is a bar chart. I think this gives perhaps the most graphic example of how fees have exploded. These are the fees for our operation in Nebraska at Crowe-Butte, and you can see that the hourly fees and the project manager fees have gotten out of control.

You will recall last August I was here, and I met with Commissioner Diaz, Commissioner Meserve, Commission McGaffigan. We talked about an issue we had facing us with regards to restoration of our mine unit number one at that time.

We are, unfortunately, still trying to get resolution of this issue. This is after several months and over \$100,000 in project manager fees that we've been charged for this.

Now, I want to emphasize that this is not the fault of the project managers. It's not the fault of the staff. It's not the fault of individuals at the NRC. In fact, the project managers we have at Crowe-Butte and Highland, these are extremely dedicated, hardworking, capable people who do, I think, an excellent job of working with us.

The problem lies with the regulatory environment in which the fees are being assessed, and that's I think what we have to address.

We certainly appreciate the effort that the Commission, as I said, has put into preparing for this meeting. We simply want to indicate that the uranium recovery industry in the United States is, I think without question, an extremely important industry. Obviously, it's under market pressure. These things happen in free markets. We're not concerned with that as much as we're concerned with the current fee structure that we face, which, as I said, puts us in a position of bearing a cost which we are now finding to be simply not bearable.

Thank you again for your time and for the chance to talk to you today.

MS. SWEENEY: Oscar, if you'd go to the last slide, I'll just cover that real quickly. It's just on -- moving forward on fees.

We think it's in the nation's best interest to have a strong domestic uranium recovery industry, but to achieve this we think something has got to give. That's why we're going to pursue any solutions that we think might be feasible. So we will be going to the Hill and coming to the Commission. We'll be going to the Hill to look for legislative solutions. We'll be coming to the Commission with a petition for rulemaking, for an exemption from fees, something akin to what the non-profits have.

We'd be more than willing to sit down and discuss the best ways to go about that or what should be included in those packages with any appropriate staff -- Karen Cyr perhaps or the CFO at NRC. We'd be more than willing to sit down with them and discuss how to move ahead on these.

We are not asking for a permanent exclusion from fees. This would be a temporary measure until the price of uranium went up to a level where the industry can function again.

Of course, the outcome of the legislative or the rulemaking would be uncertain. So there are a couple of things that we think that NRC should be looking at now to help. And I think, as Fletcher indicated, one would be the project manager time and how their time is coded.

We know there have been some discussions about changing project manager designation to point of contact in some instances, and that might keep some of those costs down. Also, any place that we could eliminate unnecessary duplicative oversight to the minimum necessary would also reduce fees.

And, again, we thank you for your time today.

CHAIRMAN MESERVE: I'd like to thank you for a very interesting and helpful presentation. We'll go through our full cycle, but I think it's Commissioner Diaz's turn to go first.

COMMISSIONER DIAZ: Oh, it is? Well, thank you, Mr. Chairman. It must be something to do with the temperature of the room.

(Laughter.)

I'm really pleased that the Commission is holding this meeting today. I believe it is an important meeting and brings out facts that are important to our nation. I think we have been making a lot of decisions, many of them very complex, and half of them I don't understand myself, which is good because normally it's three-quarters of the time.

(Laughter.)

But we really needed to pause at one time and take another look at what has been going on and what have people learned, and what have we learned on this process. And I really thank you for the opportunity to listen to your views, and I assure you that I personally think this is an important issue to our country, that deserves our best attention, and I personally -- I'm sure my colleagues, too -- intend to do that.

Having said that, and turning to the issues that have been presented in the SECY, I tried to understand and I will ask a question. It seems like the changes to Part 40 are not bad. The issue is an issue of, can you afford it or not? Do you want to elaborate on that? Will Part 40 -- let's assume that somebody has a magic wand. Maybe the Chairman has a magic wand.

(Laughter.)

CHAIRMAN MESERVE: I've been hiding it.

(Laughter.)

COMMISSIONER DIAZ: Yes. You know, I'm good at shifting responsibility to somebody else.

(Laughter.)

And fees could be, you know, ignored. Will Part 40 do what needs to be done, the revision to Part 40?

MS. SWEENEY: I think the industry would support going forward if fees were magically taken away and it wasn't going to cost the industry --

COMMISSIONER DIAZ: For a short period of time.

MS. SWEENEY: For a short period of time, yes.

COMMISSIONER DIAZ: Right. Okay. I think that's the only question that I have. Fundamentally, it's what I needed to know. Thank you so very much.

Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Thank you.

Commissioner McGaffigan?

COMMISSIONER MCGAFFIGAN: Thank you, Mr. Chairman.

I want to commend folks for the presentation they made. I agree with Commissioner Diaz that this is an area where something needs to be done, and, you know, clearly the end of the Cold War, the vast amounts of highly-enriched uranium that have become available, both in the United States and Russia, are a large part of why the industry -- why the price of U308 -- the spot price is \$8 a pound.

And I've noticed that the Congress has passed a lot of report language urging that we -- that the executive branch think about this issue. I think that a legislative solution could well make some sense. I mean, I support a legislative solution, basically, that would get your fees off the fee base for a period of time until the price of uranium was at a lower level.

What is the level, Katie? I mean, if they are writing legislation here, in mark-up what is the price I put in where -- and what is the period of time? If the price of uranium -- is it spot, or is it the long-term price, and is it above what number?

MS. SWEENEY: I think that we would probably need to get together and discuss that. But I think we were preliminarily discussing spot, and it would have to be at a certain price for at least a year.

COMMISSIONER MCGAFFIGAN: Okay. Well, I think you need -- we -- in some sense, we will be asked by Congress whether we agree with your legislative solution. But I think that's -- you all have to

write it first.

MS. SWEENEY: Which is why we want to discuss it --

COMMISSIONER MCGAFFIGAN: Okay.

MS. SWEENEY: -- with the appropriate people here also.

COMMISSIONER MCGAFFIGAN: Well, you need to discuss it on the Hill, because they're the ones

that are --

MS. SWEENEY: Yes.

COMMISSIONER MCGAFFIGAN: The amount of money is relatively modest. The total amount that would then go to the general fund is a relatively modest amount of money, as I understand it. And we can ask the staff later what that amount would be.

But the second option you mention is a rulemaking akin to the non-profits as a -- in case the legislation fails. In the case of the non-profits, there's a similar theory that the non-profit educational institutions provide the framework, the human capital for the industry as a whole, and, therefore, they deserve to be off the fee base. You provide the material capital for the industry as a whole, and I'm sure that's the theory you're going to be forwarding.

The trouble for you, given the presentation by Mr. Newton, is that the non-profits have an exemption from annual fees under that rubric, but I don't believe they have an exemption from hourly fees. And so I don't know what the legal -- whether -- I'm not a lawyer. I defer to Katie and Karen and Joe and other lawyers in the room as to whether you could come up with a theory for the hourly payments.

But I -- I think that might be more difficult. So I think the legislative solution may be the more attractive solution because it can be a more comprehensive one. And I'd suggest working with our staff and the Hill staff to try to deal with that.

The PM fees -- in all honesty, when we did that a couple of years ago, I will admit, as Commissioner Diaz has admitted, to not total knowledge. I will admit that the model I had in my head was the PM for, say, Dominion Power who covers North Anna and Surry, you know, four plants that probably make multi-hundreds of millions each per year, and not the notion -- we have a single PM, I believe, that covers them now. And not the notion of having a PM who might be costing \$100,000 a year for a concern where it's a very small entity.

I think we may need to consider that. I mean, we have a current rule out. You all presumably are going to comment on the current rule, consistent with some of what you've said previously. But I personally think that we need to consider whether the decision we made on PM fees, whereas the model I -- I'll admit I had in my head were big licensee, big fuel cycle facilities, big reactor facilities. I did not see the unintended consequence on you all, so I -- that's something that I will think about as we go forward.

And with regard to the issues, I think you've made your point. I personally am willing to reconsider the decision that we made on water, on waste water. I think that it's something that we do need to find a way to reconsider as we go forward.

I don't really -- I understand the points you're making. I'll have some questions for the staff later as to why those points aren't sound. But I -- again, there's unintended consequences to a decision, and I just telegraph that I'm -- I'm heavily influenced by what you've said thus far.

That's all, Mr. Chairman.

CHAIRMAN MESERVE: Commissioner Merrifield?

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

I would agree with my two fellow Commissioners. I think this is a good opportunity for us to sit down and have a dialogue about the issues that we have between us. I have to admit, I think in the two and a half years I've been here on the Commission some of the issues associated with the mining industry have not gotten the sort of airing and opportunity for this kind of presentation before.

In a discussion I had with Mr. Gerard, we both agreed something like this would be helpful, and I'm glad the Commission has agreed to have this meeting.

I guess there's a variety of different issues we've discussed today. Commissioner McGaffigan just talked about the issue of restoration associated with in situ leach operations and how we go about regulating that. Again, coming -- I think I came to it originally when I cast my vote from a couple of perspectives. One is an eastern perspective on the issues of water, and the second one is as a result of the dialogue that I had had with EPA on RCRA and Superfund issues that I dealt with when I worked up on Capitol Hill.

It was unique for me to hear, and only after I cast my vote did I hear of the notion that EPA was willing to give exemptions for these aquifers. That is typically not an issue that we find when we interact with EPA at many other sites. And so I think that issue in and of itself highly colors where we may need to rethink where we went on that particular issue.

COMMISSIONER MCGAFFIGAN: It doesn't happen in Arlington or Rockville.

COMMISSIONER MERRIFIELD: It does not happen in Arlington or Rockville. That is exactly right.

(Laughter.)

So that -- I think that is an important one.

On the issue of PM costs, I wasn't here when that original decision was made. I have spoken with other members of the Commission. I think that's something that is of great concern.

We have to be mindful of a variety of burdens that we have. And to the extent that we are passing off such a large cost on a small licensee, I think it's something we need to be mindful of. So, again, I think that's something which is worth reassessment and reevaluation over.

I'm disturbed -- you know, I think we are caught here in a regulatory Catch 22. And Commissioner Diaz has alluded to it. We have a situation in which there is general agreement I think among our staff, in some of the comments we have heard today, about the benefits that we could receive from going forward with the Part 41 rulemaking, not only in terms of being more risk-informed about the regulations we do, but the possibility of reducing unnecessary regulatory burden, which is obviously one of the things that we, as a Commission, have been very interested in following.

Yet, at the same time, to the extent we try to achieve some of those benefits, both from greater health and safety and environmental benefits, yet reducing the burden, we can't do that because the costs are too large for the licensees who are associated with it. So you can't get the benefit because you can't pay for it, and I think that's not a good outcome in a regulatory atmosphere.

And like Commissioner McGaffigan, I would support legislative options up in Congress that would provide us some relief to provide you some relief in that respect.

I guess there is one area I do have a question about. We talked a little bit -- Mr. Thompson talked about the issue of concurrent jurisdiction relative to the states, dual regulations, as it results in our interactions with EPA. I understand better now how some of that overlap can occur.

At the same time, I'm also mindful of the fact that Congress clearly does not want us to simply turn tail and walk away from our regulatory requirements. I mean, we have an expectation up in Congress that we do the right thing.

What that may require, as you've suggested, is perhaps an MOU, with either EPA or other state agencies, to make sure that to the extent -- if we were to decide to step back somewhat, that the field would be covered. And I don't think we can merely do that without making sure that we're fulfilling our legislative responsibilities under law.

With that, too, however, also comes a cost. The cost of MOU is not small. We've been undergoing efforts to try to draft an MOU with EPA on other cleanup issues. That has taken extraordinary amounts of time and resources of our agency, and we have as of yet -- as of yet have not been able to fulfill that desire to meet that.

I hope you're cognizant that there's a cost associated with that and understand some of the burdens that we have. I don't know if you want to comment on either of those issues.

MR. THOMPSON: I would say that we do understand that. I think that the -- frankly, my personal opinion -- and others may disagree -- that the approach that makes the most sense is what the staff was looking at back at -- in 1997 at Riverton, which is -- is to look at you've got a draft standard review plan that pretty much mirrors the Wyoming approach.

Now, if you look at what Wyoming does, or Nebraska -- just pick one -- and if you are comfortable with the way they go about it, you can rely on what they find to an extent and fulfill your responsibilities by relying on what they provide you, the information they provide you, and that the licensee has provided to them. And where you find it deficient, then you can step in and go forward with the licensee to work out additional information.

That seems to me to make the most sense. That was what the staff was sort of working towards, and you almost have it in being with this draft standard review plan. You ought to be able to take that, size it up with Wyoming or Nebraska, and see where you think the rough edges are, and then work out some sort of an agreement with them. I don't think it would have to be anything too formalized that NRC -- to the extent it -- it will review what the state provides, say, when restoration is completed and the wells are tapped and all this sort of thing.

And unless you have serious questions about it, you're prepared to accept what your fellow state regulators, you know, provide to you. That makes sense to me as an approach that might be workable without -- and the EPA thing, I don't really think we have as much of a -- I mean, we recognize that you have to have an aquifer exemption and a UIC permit.

For example, if you apply for an NRC license to be an ISL mining operating, if you get your NRC license before you get those permits you can't start operating until you get them. I mean, they're a prerequisite to ISL mining. And we don't quarrel with that. We understand that. In fact, the aquifer exemption is what allows us to do that.

So we don't have a problem with that. So I don't think there's as much overlapping jurisdiction, frankly, between EPA and NRC on the UIC side of things. It's maybe more of a theoretical overlap. You have to have those things in place.

So I don't think that's our big problem. I think it's more with the states.

Fletcher, you maybe disagree with that I guess.

MR. FLETCHER: No. No, I would agree with that. As Tony pointed out, the EPA -- for purposes of our operations, the EPA is involved from the very beginning. And they grant us an aquifer exemption on the basis that, first of all, the water in that aquifer cannot be used as drinking water, and has never been used for drinking water ever. Number one.

Number two, that the aquifer contains a mineral that we can extract and essentially make money extracting it. And based on those two criteria, they then give us an exemption in perpetuity.

Now, in both Wyoming and Nebraska, the local state authorities were concerned, nonetheless, that they wanted to make sure once we completed our mining operations we did not create a problem down the road. And so both of those states have developed, as I said, a well-defined, rigorous set of laws that control the issue of restoration.

And the reason we're so frustrated in Nebraska, where we've submitted to the NRC our proposal for your consent that we've completed restoration in our first mine unit there, is that the State of Nebraska, which developed these rigorous standards many years ago, they have already signed off on that. They've agreed two years ago that we have completed restoration.

And we're answering the same questions and dealing with many of the same issues, as well as many new issues, at the NRC level. Now, again, I want to emphasize it's not -- you know, I'm not finding fault here with the project managers. I mean, the people doing this work I think are well-intended. They are trying to make sure that the NRC fulfills its mandate. These are conscientious, hardworking people.

The problem is that, given the regulatory environment in which we work now, we are paying a tremendous amount of money and spending a tremendous amount of time and precious resources that we can't afford to spend. We're spending it answering issues and dealing with questions that have been dealt with years and years ago.

MR. THOMPSON: And one of the issues that was raised is, what happens if the restoration doesn't, in effect, hold over time? And as I pointed out before, the EPA UIC rules don't require restoration. But if you're going to impact a non-exempted aquifer, then you have to fix it. So if it didn't hold, you'd have to come back and fix it, I presume. I'm pretty sure the state, as a delegated authority, would require you to do that.

MR. FLETCHER: This is exactly something that the states are concerned with. And this is one of the reasons why the states have imposed extremely rigorous standards on us. They want to know what's going to happen in 50 years, 100 years, how fast is water in the aquifer moving, where is it going, and what's going to happen over time as that water moves.

And we've demonstrated to both the State of Nebraska as well as now in Wyoming -- in Wyoming we've used, actually, a computer model that tells us very clearly and very specifically what happens to that water as it moves through the ground over the next 100, 1,000, 10,000 years.

COMMISSIONER MERRIFIELD: Well, you've raised some interesting issues for us to think about some more, and I appreciate it.

For my part, I did have -- during my time on the Hill, I did have a variety of interactions with NMA and did have an opportunity to visit a number of the facilities of your members. I have not yet done so as a Commissioner at any of these facilities, but I intend to do so this summer. I will be visiting some of the mines out west and look forward to it.

MR. THOMPSON: We would be delighted to host you as well as all of the other Commissioners. Any time.

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Thank you.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, could I just get a brief -- Mr. Thompson, do I interpret your answer to say that we don't need MOUs? So the cost of negotiating them wouldn't be there?

MR. THOMPSON: I'm not sure that you need an MOU. I think that -- yes, I mean --

COMMISSIONER MCGAFFIGAN: I just wanted to clarify that.

MR. THOMPSON: I think the states have indicated that -- for example, Wyoming said, "Look, you know, we're willing to work in a cooperative manner. We're going to do this anyway, so we'll submit it to you. And if it satisfies you, then you can sign off."

COMMISSIONER MCGAFFIGAN: Okay. I just wanted to clarify that.

MR. THOMPSON: Yes.

CHAIRMAN MESERVE: Thank you.

Let me say, like my fellow Commissioners, I am fully cognizant and agree with the importance of this industry, and recognize the difficult economic situation in which the industry finds itself and the problems that our fee rule -- fee obligations do present.

It does seem to me that the -- from our perspective, the easiest solution is one that's a legislative one, that finding a way through the thicket of our -- what we're required to do statutorily, to try to find a way -- that relief may be difficult, although I'm open to exploring whether there are some ways we can handle this.

I think that there are complexities there that may make that extraordinarily difficult to do, but we're -- we have definitely -- I think all of us have received the message that you've sent us about the problems on the fee rule and the fees, and we're all -- I'm sure all committed to try to find a way to try to deal with that problem.

I have just a few minor questions on more ancillary points. In one of your slides you had indicated that NMA and the Fuel Cycle Forum are working on generic guidance for disposal of non-11(e)(2) material and tailings piles. And I am curious as to whether the DOE -- there's been interactions with DOE on that issue.

I know that one of the concerns has been that DOE, of course, has to be the ultimate custodian of the site or state if they were to choose to do so. Probably it's going to be DOE for the tailing sites, and so they have got to be comfortable with the situation at the end of restoration.

I'm curious as to whether there has been any engagement by you with DOE on that issue.

MS. SWEENEY: We have talked to some DOE personnel about this issue in the past. We haven't talked to them again since we have decided we wanted to move forward with this, with the Fuel Cycle Facility Forum, but we definitely intend to be talking to them about the jurisdictional issues and the hoops that industry might have to jump through to pursue going forward with putting non-11(e)(2) materials in tailings piles. We know that's a big issue.

CHAIRMAN MESERVE: So this process -- you don't have indication where DOE is on that issue?

MS. SWEENEY: I think we have gotten some conflicting messages from DOE.

CHAIRMAN MESERVE: Okay.

MS. SWEENEY: Depending on where they're located.

CHAIRMAN MESERVE: Mr. Thompson, I want to raise one question that you raised in your slides. You had made the point that our decisions with regard to the liquids resulting from ISL activities created a problem with violations of NPDS permits. I would have understood that if the liquids were defined as byproduct material they would be exempted under the Clean Water Act.

I think the Dawn Mining case from the Ninth Circuit would -- holds that. So I think that you may have some unnecessary NPDS permits as to those liquids, to the extent that they are deemed to be byproduct material. But you wouldn't have a violation problem.

You might have a violation problem with us in terms of past releases that, because of the retroactive issue, presumably we can deal with that. But I don't understand the point about the violation with the -- of the NPDS permits.

MR. THOMPSON: Well, I think that I -- I understand your point about the Dawn Mining decision, and that the requirements are not applicable to byproduct material. But these NPDS permits and regulations were in place well before that decision happened. And while it may not be -- and, of course, the Commission's decision on the concurrent jurisdiction essentially reinforces that, as far as I'm concerned.

But it does raise the problem of technically being in violation of the rules and the permits, but the more important question is the liability. A much more important question is the liability for cleanup for something that's gone down the stream that was in -- in accordance with the regulatory limits.

And in some of these areas out there, as you well know, in the grants area where -- where some of these streams -- streams were coming from a variety of different mining sources, and there's no way to tell who put what in there and how much of it is yours and what's byproduct material and what's not. And so the liability issues are staggering, and it's already being pressed on these licensees by the staff as a result of that decision.

CHAIRMAN MESERVE: Let me make sure I understand. Is it -- I think that your answer is is that the problems as the liability are being created by the NRC --

MR. THOMPSON: Right.

CHAIRMAN MESERVE: -- in that materials that were released pursuant to an NPDS permit you thought you were authorized to do. Now the staff is coming back at you and saying, "Now, wait a minute. That's byproduct material, and you have to do restoration activities."

MR. THOMPSON: Right.

CHAIRMAN MESERVE: So it's an NRC --

MR. THOMPSON: It's an NRC issue, and you have the situation, for example, in the grants area where people were pumping mine water, where you're running it through the IX and you're discharging it on an NPDS permit which is not the same thing as -- it is the same thing physically, chemically, and otherwise, as restoration fluids that are being pumped down the stream. So you have multiple of these things pumped down the stream.

Now, all of a sudden, some part of that is byproduct material. How do we tell whose is what, how much of it is yours, how much of it is somebody else's, and it's -- it is an NRC-created problem. That's right.

CHAIRMAN MESERVE: Don't you have that problem anyway with -- to the extent you have contributions to those streams that are not through the NPDS permit, non-point discharges, or groundwater contribution to the stream, which maybe you don't have in that area, or materials that have been windblown and have then been entrained in the stream?

MR. THOMPSON: I'm not sure I understand, Mr. Chairman.

CHAIRMAN MESERVE: I guess the question I have is you've indicated that part of the issue was the NPDS permit, that you had exempted releases and that this -- and that, therefore, there's a retroactive problem of going back and recapturing.

I'm just raising a question as to whether there isn't going to be some issue -- factual issue -- as to the origins of the materials in the stream in any event, because some of the material that might be in the stream could well be argued got there through a mechanism other than an NPDS release.

MR. THOMPSON: I'm sure that's -- that's possible. That's possible, because these are not -- you know, we're not talking about a room where everything is inside and we know what gets out. It's -- we're talking about out in the environment. That's possible.

But, certainly, if anybody thought that -- that by releasing hundreds of thousands of gallons of water for 15 years down the stream was going to cause them to all of a sudden be subject to clean it up because it's now byproduct material, whether they would have done it is a serious question.

And I can't imagine that windblown tailings would be -- I mean, it might in a site-specific situation be blowing into a water course, but, you know, each mill is going to know more or less where their tailings are from the wind direction and all that sort of thing.

These are complicated. There's no question. The physical circumstances are complicated. That's a fair statement.

CHAIRMAN MESERVE: Thank you.

Commissioner Dicus?

COMMISSIONER DICUS: Thank you.

Let me apologize for being late. It wasn't so much the traffic lights from downtown. It wasn't even the traffic lights from out in the boondocks where I live. But it's -- I'm going to be out of town for a few days. It was getting the kids to the kennel, and they're starting to build my deck, and dealing with that, so I had a lot of things going this morning. I do apologize for being a few minutes late.

CHAIRMAN MESERVE: By "kids," she means dogs.

(Laughter.)

You said kennel. I --

COMMISSIONER DICUS: Yes. The kids are -- my dogs are my kids. Okay?

(Laughter.)

COMMISSIONER McGAFFIGAN: Sometimes those of us with real kids are tempted.

(Laughter.)

COMMISSIONER DICUS: Anyway, the kids are at the kennel, the deck is doing well, and my neighbor has got everything under control. So I'm here.

My being late does not in any sense indicate my lack of interest in this, because, indeed, I think you know from the interactions that we've had over time I do have some -- I do have some issues and concerns. And I -- like my fellow Commissioners, we are all concerned about any kind of regulatory burden that impacts an industry.

But at the same time, obviously, we have a certain radiation safety and radiation protection



mandate that we cannot back away from. So I think what we're trying to deal with here is, how do we marry these two, not conflicting issues but certainly less than easy issues to resolve?

Now, I want to talk about your legislative solution. I think you probably are aware that for some years now the Commission had worked very hard to get -- get some of our activities off the fee base, and it took years to do it, and only very recently have we been successful in that.

And then that is going to take time to phase in. I think you're aware it's over a period of about six years. At a certain percentage per year, we will get something off the fee base.

How optimistic are you on a legislative solution, given obvious history that we have?

MR. GERARD: Is this the easy one, Katie? Is that --

MS. SWEENEY: This is your bailiwick.

MR. GERARD: My bailiwick. Oh.

In answer to that, Commissioner, I'm not sure right now. I think we've got to go up and do some preliminary pulsing, if you will, and some seated here on the Commission may have a better guesstimate than I would. But I think it's something, obviously, we feel strongly enough about, as I mentioned earlier in some of my opening remarks.

I think the climate has shifted a little bit to where there's going to be more sensitivity to these types of issues in light of what's going on around the country, just from an energy policy perspective. So I think our hope is that in that environment perhaps we'll have a few more listening ears and a chance to articulate our views or to make our case.

Will that happen this year? I'm not sure. Will it happen this Congress? Not sure. I think after we begin to pulse a little bit, one of the reasons, obviously, we wanted to come as part of this presentation and let you know our thinking in that regard is we believe it's important that we do coordinate with you.

Having been in town for a little bit, we understand a lot of those first calls are going to come right here as to, what do you think about this? What's your reaction to what they're proposing? So our hope is let's work together. But to guess right now, our likelihood of success, not -- not sure.

COMMISSIONER DICUS: Okay. That's a fair answer. I appreciate that.

Then, let's take it to the next step, and assuming perhaps that there is not in the immediate foreseeable future a legislative solution, then you're going to pursue regulatory exemption from our fees, and along much in the same way as in the non-profits, which means that -- now, the base fees have to be shifted to someone else, just as they are for those who don't pay fees.

Now, I think we do have some -- and, you know, as I mentioned, I share with my fellow Commissioners some concerns about the fee situation here. And we probably have some efficiencies that we can get at, but we're looking -- I think all of us are looking closely at the PMs and whether or not there are some excesses there that we can control a little bit better.

But assuming whatever efficiencies we're able to do, assuming that we pursue the regulatory exemption -- and I don't mean to put you on the spot -- but somebody has to pay. There is a fundamental -- who do you assume is going to pick up the difference in the fuel cycle? Or is it the end user?

MS. SWEENEY: No. I think it would have to be kind of spread out on -- amongst the rest of NRC's licensees. Is that fair? No. But if there is -- I mean, if the domestic uranium recovery industry goes away, it would be awful hard to start it back up. We'll lose it. We'll lose the expertise.

I just think that -- and that's why we're looking for a temporary exemption. No, it's not fair. Is OBRA fair? I don't think so. So we're going to try to work whatever solutions we can.

But, yes, we had the same concern as you did. We talked about this. We had a meeting yesterday, and we said, you know, "That question is going to come up. How do we feel about it?"

COMMISSIONER DICUS: Well, I'm glad I asked it. I wouldn't want you to be disappointed. (Laughter.)

MS. SWEENEY: Well, that's true. Somebody else is going to have to pay for what we're not paying.

MR. FLETCHER: Commissioner Dicus, if I could just add -- one difference between us and, let's say, operators of a nuclear utility is that we're not able to pass our costs along directly to ratepayers. Now, I understand that not every nuclear utility today can do that. But I also think that utilities themselves are becoming more and more concerned with what they see as the tendency towards consolidation in the nuclear fuel cycle.

There are fewer producers, fewer enrichers, fewer converters, and fewer fuel fabricators today than ever before. And particularly when utilities are realizing that their nuclear assets are of tremendous value, the fuel for those assets is of concern to them.

Now, obviously, U308 prices represent the smallest percentage of a utility's fuel operating costs. The amount of money that we're talking about here is not great relative to the other fees that are being paid and the total amount of money that would have to be shifted to other licensees.

Given that, our belief and our hope certainly is that the other licensees who would pay this, particularly the utilities, would recognize that ultimately it's in their best interest that the United States maintain its capacity to produce uranium domestically.

Because Katie is absolutely right -- when I lose people in Nebraska, when I lose people in Wyoming, when my electrician, as he did yesterday, at Highland quits to take a job in Rawlins, Wyoming, because we can't pay him enough, he's gone. And I lose that expertise, and I can't get it back.

The people who are in this room today represent a tremendous amount of experience, much as the staff people at the NRC do as well. When you lose those people, you've lost a tremendously valuable resource and you can't get it back.

COMMISSIONER DICUS: Okay. One final thing. And, Mr. Newton, this is to you. You mentioned the fact in your closure activities in Nebraska that the state had bought off on everything and approved --

MR. FLETCHER: Yes.

COMMISSIONER DICUS: -- but the NRC hasn't yet, or has been lagging. Of course, this becomes a cost and a fee issue. Did you submit the same material at the same time? And give me your view on why we're not as efficient as the State of Nebraska.

MR. FLETCHER: We actually submitted the -- submitted the plan, first of all, to the State of Nebraska. And there's a rather complicated chain of events here that I won't go into. But the project manager at that time, after we had received approval from the State of Nebraska, when we submitted it to the NRC --

COMMISSIONER DICUS: So you submitted it after you submitted --

MR. FLETCHER: Yes.

COMMISSIONER DICUS: -- to --

MR. FLETCHER: Yes, yes.

COMMISSIONER DICUS: And after you got approval from --

MR. FLETCHER: After we got approval. That's correct.

COMMISSIONER DICUS: Okay.

MR. FLETCHER: The project manager at that time was concerned that maybe the standards of the State of Nebraska weren't adequate to ensure public health and safety. I think he was genuinely concerned that, as a representative of the NRC, he wanted to make sure the Commission fulfilled its mandate to protect public health and safety and make sure that five or 10 or 15 years down the road we didn't have problems come up that were unanticipated.

Now, of course, the people in Nebraska didn't quite cotton to that because they said, "Look, it's our water. It's our land. We know this as well as anybody. You don't need to tell us how to run our business." But I think the project manager at the time was well intended.

Now, he was transferred. We have a new project manager, Mike Layton, who is an exceptionally bright guy, talented guy, hardworking. I've met him on two or three occasions. Obviously,

there's a learning curve there. So he has to spend a certain amount of time to bring himself up to speed on what's going on. That's natural.

And, obviously, because he's a dedicated guy who takes this stuff seriously, he's going to spend a certain amount of time with it.

So as I say, I'm not -- and I want to be very clear on this. We're not blaming individual project managers. We're not putting the fault there at all, not in the least. It's simply the regulatory environment in which they work.

Before Mr. Layton I think is able to make an informed decision or an informed recommendation, he naturally wants to make sure he has covered all the bases. The problem is we're paying a tremendous amount of money for that.

COMMISSIONER DICUS: Are the values of the standards of the State of Nebraska not protective

--

MR. FLETCHER: We think they are --

COMMISSIONER DICUS: -- with the water?

MR. FLETCHER: We think they are extremely protective. We've explained to the State of Nebraska how this works, what happens to this water. Much of what we're really talking about here is simply an education process, where an aquifer now has been used --

COMMISSIONER DICUS: Which aquifer is it?

MR. FLETCHER: Geologically?

COMMISSIONER DICUS: Yes.

MR. FLETCHER: I couldn't tell you off the top of my head.

COMMISSIONER DICUS: Is it a feedwater? I've forgotten the name of it.

MR. FLETCHER: There are so many of them.

COMMISSIONER DICUS: Okay.

MR. FLETCHER: It's really --

COMMISSIONER DICUS: It's a major one, though, that comes -- starts in the --

MR. FLETCHER: Oh, no. No, this is not major at all.

COMMISSIONER DICUS: Oh, it's a small one.

MR. FLETCHER: Yes. You know, the term "aquifer" is a little misleading.

MS. SWEENEY: Shadrin.

MR. FLETCHER: Shadrin aquifer. Okay. What we're really talking about here is sandstone that's got water in it.

COMMISSIONER DICUS: Okay. That's okay. It's not the big one.

MR. FLETCHER: Yes. No, it's not the big one at all. And the point here is that we've now demonstrated to the State of Nebraska, and I think we'll be able to demonstrate to the NRC that nothing is going to happen years from now, decades from now, centuries from now, that could in any way harm the public health and safety.

COMMISSIONER DIAZ: Are you talking about radionuclides, or are you talking about sulphates

and --

MR. FLETCHER: Everything.

COMMISSIONER DICUS: Okay.

MR. FLETCHER: And, intuitively, you can understand that. I mean, these aquifers have been there for millions of years. The uranium has been there for millions of years. They haven't polluted other aquifers, and they won't.

COMMISSIONER DICUS: Okay. I could go on a little bit on this, but I think in light of the time I'll pass at this point.

Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Thank you.

I'd like to express, on behalf of the Commission, our appreciation to all of you for a very helpful presentation. We now have an opportunity for a second panel from the NRC staff to address us. Thank you very much.

COMMISSIONER McGAFFIGAN: Mr. Chairman, while they're coming to the table, I just want to -- Karen Cyr clarified for me that the university exemption that we have in place at the moment covers both annual fees and hourly fees. So those with university research reactors pay zero fees, and I was wrong at that. So I just wanted to make that clarification.

CHAIRMAN MESERVE: Thank you.

We have a staff panel now to discuss the same issues. Dr. Paperiello, would you like to proceed?

DR. PAPERIELLO: Thank you, Mr. Chairman.

We appreciate the opportunity to brief the Commission today on the rulemaking and guidance development for the uranium recovery industry. Briefly, by way of background, in the staff requirements memorandum for SECY-99-011, the Commission approved the staff's recommendation of a new Part 41 dedicated to the regulation of uranium and thorium recovery facilities.

The Commission also directed the staff to be aware of the potential cost of such action and may -- and the fees that may be paid by the affected licensees.

After the Commission's directions on SECY-99-011, the staff received strong feedback that the potential cost of a full rulemaking would be exceedingly burdensome to an economically distressed uranium industry. The staff wanted the Commission to be aware of the industry's concerns, and also to examine appropriate alternatives to rulemaking that could clarify long-standing issues in the uranium recovery program.

Because of these concerns, the staff wrote SECY-01-026, Alternatives for Rulemaking, Domestic Licensing of Uranium and Thorium Recovery Facilities. The purpose of that paper was to solicit the Commission's direction on the best approach to take considering the broad range of desires and needs from the diverse group of stakeholders -- industry, states, DOE, EPA, etcetera -- involved in the uranium recovery industry.

Today, the National Mining Association, and now the NRC staff, will discuss several technical and diverse regulatory issues that have become the focus as a result of the work that has been ongoing since the issuance of the SRM for SECY-99-011.

In addition to all the papers that have been raised thus far, I think I'd like to emphasize one other point. No matter what alternative the staff is directed to implement, and whether we're talking about overlapping authority, surface water discharges, or some other issues that our stakeholders have discussed with us, these issues are still going to need to be worked through.

And whether rule or guidance, we're going to have to write down our policy, so it's understood by all and consistently implemented. And I expect, in accordance with the Commission's existing policy, stakeholders will be involved, and the final product will be reviewed and endorsed by the Commission to ensure Commission policy is met.

And this is all going to involve resources. And, in fact, if we do absolutely nothing, the individual licensing actions and uncertainty accompanying them, and potential litigation, will cost resources. So there is a resource implication no matter what we choose. It's just unavoidable.

And with me at the table today are Mr. Virgilio, Mr. Weber, Mr. Allen Howe of NMSS's Rulemaking Branch, and Mr. Mike Layton of the Fuel Cycle Branch. And a presentation will be made by Mr. Howe and Mr. Layton. At this point, I'll turn the meeting over to Mr. Howe.

MR. HOWE: Thank you, Dr. Paperiello, and Commissioners.

A lot of the points that have been discussed today I will also cover as well, but I will try to be brief with my remarks.

With the first slide, just as an overview, I'll briefly discuss the draft rulemaking plan and the rulemaking options paper that was recently forwarded to the Commission. I'll then turn the

discussion over to Mike Layton, who will present the status on other uranium recovery actions, resources, and stakeholder feedback.

On the next slide, we implemented the Commission direction in SRM to SECY-99-011 and incorporated guidance from three related SRMs. We developed a revised rulemaking plan and provided it to all of the states for comments last September. We did receive comments on the rulemaking plan from five states, from the Conference of Radiation Control Program Directors, or the CRCPD, and also from industry.

Colorado, New Mexico, Washington, Utah, and the CRCPD generally supported the need for a new Part 41 and the specific regulations for the in situ leach facilities. The comments also reflected four previous issues raised in the 1998 National Mining Association white paper as issues were discussed earlier.

The State of Wyoming, the National Mining Association, and the Rio Algom Company, were not in favor of the Part 41 rulemaking. In support of their position, these commenters cited the current economic status of the industry and that was covered earlier as well.

As a result of the potential economic burden on the industry, as a result of the planned rulemaking, and coupled with a proposal by the National Materials Working Group to consider a pilot process for interaction with NRC, we were led to revisit the rulemaking plan.

Next slide, please. We're a little bit ahead here. It should be SECY-01-026.

The staff recently provided the Commission with an options paper for proceeding. The three options in that paper -- I'll just briefly go through them. Option one was the National Materials Working Group option where a concept was proposed that we would work in conjunction with the agreements states in a leading role to consider revising the existing requirements.

That three-step process would provide for developing a rulemaking outline similar to an NRC rulemaking plan, but it would also contain the mechanics for interactions, responsibilities, and decisionmaking. As with the rulemaking plan, this outline would have a new rulemaking alternative.

Assuming that -- as step two, assuming that rulemaking is the approved product, the working group would implement that Commission direction. And the final step on this would be NRC conversion of that product to a rule under the Administrative Procedure Act.

The staff believes that this option gives us an opportunity to clarify and consolidate the existing regulations using less NRC resources than would be in a standard rulemaking and also a chance to evaluate a new concept. As observed earlier by the NMA, the staff also recognizes that this option may include possible difficulties with reaching consensus amongst the stakeholders, and there may also be a longer time for completing such a process than you would have from some of the other options.

In option number two, the staff would proceed with the rulemaking to develop Part 41 as directed by the Commission. For brevity, I will not repeat the pro/con discussion that NMA presented earlier.

In option three, the NRC would stop current rulemaking and focus its resources on updating guidance documents. A pro for this option is that it would use fewer resources than in option two. This option would also implement Commission direction by updating the existing guidance documents.

However, this option would continue the current NRC licensing practices based on guidance and staff practice. As Dr. Paperiello observed, this could subject the NRC to hearing requests on future licensing activities.

To varying degrees, any of these options, if successful, would achieve the NRC's strategic goals of increasing public confidence, reducing unnecessary regulatory burden, and increasing effectiveness, efficiency, and realism, while maintaining safety. Because the stakeholder involvement is greater in options one and two, they are expected to achieve a greater level of public confidence than option three.

In addition, options one and two may achieve a greater level of effectiveness and efficiency than option three. Because of the lower amount of NRC resources involved, option three would result in an expected lower regulatory burden than options one and two.

As indicated in the options paper, the staff is seeking further Commission guidance before proceeding.

I'll now turn it over to Mike Layton, who will describe staff actions, uranium recovery actions, resources, and stakeholder feedback.

MR. LAYTON: Thank you, Allen.

In the interest of time, and, of course, with your permission, I'd just like to touch on the high points of the staff's actions in implementing the directions that the Commission gave us in the staff requirements memorandum for the four Commission papers, and then focus on discussions on some of the resource items and what we learned from other stakeholders.

The first action that staff took was to have two meetings with EPA on the issue of groundwater protection at in situ leach facilities. And the participants in these meetings were two offices from EPA headquarters and also representatives from Regions VI, VII, VIII, and IX by telephone.

And the focus of these meetings were to really explore the extent to which NRC staff can rely on the reviews performed by EPA or the EPA authorized states, in lieu of staff doing those reviews themselves and supporting the licensing actions.

And the feedback we received from EPA as a result of these meetings were that, at least at the federal level, EPA views that NRC's licensing program and the federal underground injection control program are really complementary of each other and not duplicative.

EPA also pointed out that some of the authorized states implement programs that are more stringent than the federal program. Consequently, really at the technical review level, the duplication between NRC and the underground injection control program really lies with the states and not with the EPA at the federal level.

EPA also encouraged us to meet directly with the affected states, and they offered to stay involved in the process not only from the standpoint of staying informed but also to assist us in understanding how the UIC program is implemented at the authorized state level. And I'd like to let the Commission know that our interactions with EPA on this issue have been very collegial and very mutually cooperative.

For the remainder of the Commission's directions, we issued a generic communication which the representatives from NMA have mentioned, the regulatory issues summary. And that was issued on November 30th of 2000. It was addressed to the uranium recovery licensees, and it was sent to the agreement states and non-agreement states. And it's also available on NRC's web page.

It encompassed, really, the four -- four items that were in SECY -- the Commission papers 99-013, 99-012, and also 99-277.

The first item that was covered in the regulatory issues summary was, what constituted 11(e)(2) byproduct material at in situ leach facilities? It also encompassed the revised criteria for the direct disposal of materials other than 11(e)(2) byproduct material in uranium mill tailings facilities.

It addressed the revised criteria for the acceptability of using alternate feed materials for the processing at uranium mills. And, lastly, it covered the concurrent jurisdiction with non-agreement states under the Atomic Energy Act.

In addition, there are two items items that we are continuing to proceed with and work on. As I mentioned previously in discussions with our meetings with the EPA, the overlapping authority of the Atomic Energy Act and the Safe Drinking Water Act is one issue that we are currently pursuing, primarily in the area of groundwater protection at the in situ leach facilities. Also, the surface water discharges from some in situ leach facilities and uranium mills.

As NMA described, previously this dealt with the non-processed wastewaters, discharges that came from the facilities where the states had issued their discharge permits for both radiological and non-radiological constituents.

Now the facilities have been informed that some work needs to be done to assure that those

discharges can form and comply with the Part 20 regulatory requirements.

On the item of resources, I would like to first go over some of the efficiencies and streamlining measures that staff has taken, really within the limited scope of influence that we have on these areas.

I think the representatives from NMA will affirm that we have been working with them quite diligently over the last few years in trying to find ways in which we can gain efficiencies in our regulatory process.

Some examples of this are that early on, we completed staff guidance in draft and final form for the standard review plans which we use in our license reviews that helps focus our review efforts. We have also implemented the performance-based license condition which is modeled after the 5059 provisions for the reactor licenses.

We have also worked with Region IV, who carries the inspection program for the uranium recovery area in streamlining the inspections, where based on past performance of licensees, some inspections may be reduced or spread out over time as opposed to the past very regimented inspection schedules. Also, in a couple of instances, the inspection frequencies have increased because of the past performance of these facilities.

Currently, as a continuing process, we are looking at ways where we can really change our daily practices, like drafting early review -- or not review plans, but technical evaluation reviews. It helps focus us in doing the detailed reviews for the licensing actions. We are trying to achieve a goal of really looking at trying to do one round of requests for additional information as we go through our review process. If the information we receive from our licensees will support that goal.

In addition, we have reduced staff resources in the uranium recovery program for Fiscal Year 2001. This is reflected in the proposed fee rule that's now up for comment.

Lastly, what we have learned from other stakeholders. In addition to the feedback we receive from EPA in our meetings with the in situ leach facilities, there were two other items that EPA has recently brought to our attention. One deals with the disposal of material that are not similar to uranium mill tailings in the uranium mill tailings facilities. EPA has identified this as a potential issue of concern with EPA and the states. That is primarily the materials that are covered by the Toxic Substances Control Act, CERCLA and some of the recra materials, which contain primarily organic constituents that have different mobilities than the constituents in uranium mill tailings.

EPA has also informed us that we really need to face particular attention to the need for full consultation and coordination with the states in dealing with the approvals for alternate fee requests. Primarily not only where the materials originate, the states in which they originate, but also where they are processed and potentially transported through to the final processing.

The item or the issue that is of concern with this is that these materials may be subject to recra use and re-use regulations regardless of their source material content.

From the non-agreement states, we have heard primarily two main concerns from them. The one is the preemption of the non-radiological constituents for groundwater protection at mills. This is the concurrent jurisdiction decision.

At least one state has significant concerns with this. The feedback we have received from the states is that in their view the NRC program lacks protection. Also, NRC's program does not address the groundwater degradation concerns with non-hazardous constituents that affect the aesthetic quality and potential use of the groundwater resource.

The second item that we have heard from the non-agreement states deals with the overlapping groundwater regulations at in situ leach facilities. They have identified that this does create a regulatory burden for the industry. The states views are that they have programs in place, and that really NRC's oversight is really not needed.

From the agreement states, we have heard four items. The first item has to deal with an issue that was really not addressed in the previous presentations, either by us or NMA. It has to deal with the confusion over how to regulate the pre-1978 uranium mill tailings based on the director's decision that was issued earlier this year.

A second issue that came up, and this one actually was quite surprising to me when I heard it, that we at NRC need to be very clear about our regulation of groundwater protection at ISLs.

This comes from the State of Texas, which identified that curiously they have a similar problem that the NRC has with the non-agreement states in overlapping authorities with the Safe Drinking Water Act and the Atomic Energy Act. However, their problem deals with differences in state agencies. It's a similar overlapping authority problem that we are facing with the non-agreement states.

Also we heard from the State of Washington, who recommended an alternate approach to Part 41. They asked the Commission to consider using the existing framework in the CRCPD as a mechanism for perhaps developing a Part 41 regulation. Currently they are working on suggested state regulations as a Part U that could serve as a vehicle for Part 41.

Also, another issue that came up from the agreement states that we have not heard of or that hasn't been presented in the previous discussions deals with the license termination of agreement state licenses, and that NRC really needs to have clear expectations about what process and procedures we go through in terminating those agreement state licenses.

As an aside for the Commission's information, we are working with the agreement states on revising and clarifying our existing guidance. We have developed a workshop that will occur with the NMA and the NRC meeting in June, where we will continue to work through that issue.

Finally, with industry, there are some members who are not -- or some licensees who are not members of NMA. DOE and other stakeholders like the public and Congress, we do receive feedback from those stakeholders on a regular basis, and do incorporate that feedback in our decision process.

With that, this concludes our presentation of the findings that we've come up with through the preparation for this Commission meeting. We thank you for your time.

CHAIRMAN MESERVE: Does that complete the staff? Good. Thank you very much. Very helpful presentation.

Commissioner McGriffgan?

COMMISSIONER MCGRIFFGAN: Let me ask a question about the reg issue summary that you mentioned. I thought I heard the first panel say that they felt that there were parts the reg issue summary that were not consistent with their reading of what we said in our SRMNR. Our SRMs can be Talmudic documents. It can bring a subject to multiple interpretations. But how deep are the differences, and what's your process for trying to resolve those differences?

MR. LAYTON: Well, to be quite honest, we have not really explored what the differences are with NMA at this point. We do have the workshop planned, and we do have preparations in which we are going through with that. We do work with NMA.

COMMISSIONER MCGRIFFGAN: The issue in the Nebraska aquifer, and as I understand aquifer in this case is not like we normally think of aquifer. It's a bunch of sandstone that happens to have some water in it that is very non -- it doesn't move, over centuries.

But in that case, my recollection of the factual situation, and Mr. Layton you are the PM in addition to handling the rulemaking I guess, the factual situation there was that there may have been some license condition referring to some NRC document that implied that they would clean up to a higher standard. They are arguing now, I think perhaps appropriately, that they have met the Nebraska standard, that this is an exempt aquifer, and that radium alone is going to prevent this water from being used for human consumption essentially forever. So some of those previous things are unnecessary regulatory burdens in our current parlance.

Why does it take so long to sort of -- I know you -- they have already apologized for you are on a learning curve. You are trying to get on top of it. But in some sense, is it risk-informed to be spending as much time on this decision, given the factual circumstance?

I understand there is a legal issue. But then on the technical side, it didn't look that, based on my limited knowledge, it didn't look very ambiguous. Why does that take so long?

MR. LAYTON: Really the best answer I can put forward to that is that given that the original review looked at it in the NEPA context, really as accumulative impacts for both the restoration to the pre-mining water use and also restoration to a standard that was much less stringent, that was really evaluated more like I said as the cumulative impacts.

When the license was originally issued in the late 1980s, the condition was placed in the license for restoration to the background standard, to the pre-mining water use. So I don't think that we were able to carte blanche do it as a license evaluation.

In addition, as the Commission is aware, we have been embroiled in a hearing with another in situ facility for quite some time, where many of these same issues have been brought to bear through the course of the hearing.

Part of the concern at the time in doing this evaluation is that the recognition that this may have some broad-reaching policy implications.

COMMISSIONER MCGRIFFGAN: It strikes me that the decision, that it's the 1988, if that's the year decision that may be the problematic decision. We have got to figure out a way to get out of that because we were making in some sense inconsistent decisions then compared to the state regulator. It's not surprising that 13 years later, we are still making inconsistent decisions.

The total amount of funds in this area, if the funds like for the universities were off the fee base -- not off the fee base. If the funds for the universities -- there's two options. One, they are off the fee base and they are in the general fund. That's the legislative option.

Second is they are given an exemption like the universities and the grounds like the universities that they are part of the infrastructure, and they react to licensees as Commissioner Dicus points out, will pay the bill, should be willing to pay because just as they want to have the human capital available, they want to have a diverse industry available.

What is the total amount of money we're talking about here? Do we know? Is it \$3 million, \$4 million?

DR. PAPERIELLO: I think the CFO has a representative here.

MR. TURDIC: It's between \$4 and \$5 million

COMMISSIONER MCGRIFFGAN: Between \$4 and \$5 million dollars, okay. For the microphones, I'll repeat that. Four and five million dollars if doing a quick calculation, dividing by 100, that would be about is it \$40,000 per reactor licensee if we were to take the exemption approach until the price of U-308 is above a number that Katie Sweeney is going to reveal later. But we'll choose \$13 or something like that, just looking at her chart, U-308 spot price above that for a year.

Do you have any staff reaction to the exemption approach, the university approach? Not the CFO. I'm asking the staff first. The CFO is always opposed to all exemptions, so I understand that.

DR. PAPERIELLO: I am going to give my personal reactions, part of the issue of fees and all, how we proceed here.

Anything with the amount -- and Karen can probably correct me, but my perception is that for the size of the area, we're involved in a lot of litigation. If rulemaking would reduce the litigation and the specific cost and also that would help us meet timeliness goals and the like, does that promote the common good? If it promotes the common good, I think there is an intellectual justification for.

COMMISSIONER MCGRIFFGAN: You are raising a different approach. You are saying that if we could solve the fee issue, then we can do what is everybody's preferred option, which is to proceed with rulemaking. What's preventing the rulemaking is the cost. If the cost is solved, then we can do the rulemaking. Then that has even more benefits because it will drive down costs for both us and licensees in terms of litigation because we'll have had a rulemaking.

DR. PAPERIELLO: And settle issues.

COMMISSIONER MCGRIFFGAN: And we'll settle issues. So you are saying that there's a long-term economic benefit to both licensees and NRC if we could put this package together where for a period of time, while the price of U-308 is below a number, they are off the fee base. Therefore, we could do a rulemaking. We have to factor that in. Instead of \$4 million, it's maybe \$5 million.

But there is a nice package there, where everybody wins, except for the reactor guys. They have to decide whether it's worth \$40,000 a year or whether they can stomach that, or you know, the preferred option of everybody is legislative solution. That would put it into the general fund and we can take it that way.

But I think that's what we're talking about. I think it's an interesting challenge for us as we go forward.

I defer with that, Mr. Chairman.

CHAIRMAN MESERVE: Commissioner Merrifield?

COMMISSIONER MERRIFIELD: Thank you very much, Mr. Chairman.

I want to start off by saying everything that I have heard today and everything I heard beforehand leads me to believe that in fact the staff is doing a good job. So I wouldn't want anyone to take anything away that we don't believe that. I believe they are. I believe they are fulfilling the desires of the Commission in that respect.

What seems clear to me today is obviously there are other people that we can talk to. We have heard today from NMA. We need to have a continuing dialogue with the states, both agreement and non-agreement states. We need to talk to other members of our Federal family and other stakeholders who are concerned about whatever direction the Commission may take. I, for one, certainly am willing to continue that dialogue.

Many of the issues that we talked about today certainly revolve around the issues of cost. Commissioner McGriffgan has spoken quite extensively about legislative or non-legislative options and what may or may not be available for the Commission to do in this respect. But clearly, as Carl pointed out to us at the very beginning, none of this comes without costs somewhere. No matter what option we take there are resource implications to that. We need to be mindful and I'm glad that Carl repeated that obvious fact.

I guess one question I do want to ask. We had some discussion earlier, and Mr. Layton had talked a little bit about some states that may have regulations that exceed the level of protection we have. What is the ease or difficulty of getting into it, whether it's a formal MOU, a simple MOU or some other type of agreement with those entities?

If we decide to go down that road and we wanted to defer, either to other Federal agencies or to other states, in various elements, how difficult would that be for the staff to engage in?

MR. LAYTON: As far as difficulty, in my view it is not really going to be that difficult of a process. It may be time consuming because there are so many different parties that we have to coordinate with. They are spread out over quite a large area.

We have been in communication with the states in broaching these ideas already. We do plan to continue trying to find the means and the mechanism where we can actually meet face to face and talk from the same level of knowledge, and see where we can go from there.

MR. WEBER: Commissioner, if I may, the Commission may recall that the staff at the Commission's direction embarked on negotiating an MOU with other Federal agencies and states and some private concerns to provide the basis for EPA rescinding its Clean Air Act requirements. I believe Tony was part of that negotiation process.

As I recall, we spent nine months or so negotiating that MOU. Again, it seemed relatively straight-forward at the beginning of that process. Everybody was more or less in agreement that there was a solution out there. Although because of the number of parties involved and their interests, it took some time to come to closure on what the framework should be to resolve that issue.

COMMISSIONER MERRIFIELD: Well, I can say this. Any time you get more than two of us in a

room, it's going to be more difficult rather than less. But okay, that's fair.

I guess my takeaway from the presentation today is there are a lot of things to think about and some more reassessment we can certainly make.

Mr. Chairman, as a final comment, unfortunately I have to leave. So I apologize to the other Commissioners for not being able to listen to your final questions. But I certainly will ask my staff to get me the transcript so I can review those later on. Thank you.

CHAIRMAN MESERVE: Thank you very much.

I would like to follow up on something. Carl made an important point at the beginning. The theme of this was that regardless of whether we were to deal with these issues by way of a rulemaking or by way of a guidance, it is going to take a lot of staff time. Issues have to be thought through, that there has to be interaction with stakeholders. The message I'm hearing from that, I think, would be that gee, there's not a big difference.

I look at the SECY paper, however, and I see that alternative two, which is the rulemaking approach, here at \$300,000 and three FTE. Whereas alternative three, which is the guidance approach, is in at \$100,000 for contractual support and half an FTE. It's these costs considerations which drove the NMA to say look, don't do rulemaking.

But you made a point that either way is going to be expensive in terms of staff resources. Are you walking away from the SECY paper or reconsidering it? Or where are we?

MR. WEBER: Not in any way. We're not walking away from the SECY paper.

I think in part Carl's remarks apply to the whole area, because it's not just the Part 41 rulemaking that's on the table. It is all these other issues that were out there and we're working to resolve.

The point is that regardless of which way we go, whether it's all going to be encompassed in one solitary effort or are we going to deal with it in a more fragmented manner, it's still going to take resources to work.

The uranium recovery licensees are one of the more active stakeholders as we've known from the past experience that we've had. That's very much to their credit because it's helpful for the staff to know what are the concerns that the uranium recovery industry has, and what are the alternatives available out there.

I am pleased to hear that they are working on their own solutions for the fuel cycle facility forum for how they might best address a non-11E2 byproduct material disposal. So that's an evidence of their willingness to take creative and innovative approaches to solve some of the problems.

But it still takes, as Carl mentioned, staff effort at some point, and consultation with the Commission, to bring some of these things to closure.

COMMISSIONER DIAZ: The differential between the rulemaking and the other alternatives, it's \$150,000, \$200,000, it's not \$4 or \$5 million.

MR. WEBER: Plus the FTE.

CHAIRMAN MESERVE: Plus two-and-a-half FTE. That's where the money is. It sounds to me the way you've described it, is you see that it's going to take a lot of staff resources going either way. I mean you left the impression that you were saying this is a wash.

DR. PAPERIELLO: Then let me correct myself. I don't consider all -- in other words, it won't be equal. Guidance is clearly easier to do than all of the formality of a rulemaking, at least at the first cut.

Whether or not because it's not a rule and it's guidance, which means there's always alternative proposals, it is going to result in more litigation and more actual implementation costs down the line, is something that concerns me. Not doing anything and leaving it in somewhat of an uncertainty right now concerns me because of the amount of litigation in this area.

The other thing is if, from what I hear today, there is a decision on the waters, changes, that means we are going to have to work that one. I don't oppose that. I am just saying that could -- you could put additional requirements on us. I am not objecting. I am just saying anything you do, including this meeting, costs -- you know, has a resource cost which the way we do fees, gets passed onto the people we regulate. So that's the only point I was trying to make. Nothing is really free.

CHAIRMAN MESERVE: There was a point that was --

MR. HOWE: Excuse me. I just want to add one thing. One of the assumptions that went into the calculation or the estimates that were done here was just basically what it would cost to get to an end-point product based on what we laid out in the option. We did not look at potential uncertainties such as a litigation or implementation efforts and things like that. It was just to get a product out, a completed product out.

CHAIRMAN MESERVE: I was intrigued by one of the comments you had gotten from the agreement states, which was the CRCPD, it sounded like was developing its counterpart of Part 41, if I understood you correctly.

MR. WEBER: Right.

CHAIRMAN MESERVE: That's not one of the options that you have mentioned. It seems to me that you have underway someone who is trying to develop the rule, if I understood you correctly. Is there some opportunity for us there, to piggyback on the CRCPD work?

MR. WEBER: As I recall, that is being offered as another alternative to the three alternatives that are laid out in the paper. I'm not aware --

CHAIRMAN MESERVE: It's not that it's underway?

MR. WEBER: I don't believe, and Mike, correct me if I'm wrong, is CRCPD right now writing a suggested regulation that would implement the objectives that the NRC identified for Part 41?

MR. LAYTON: Yes. The information I received is that yes, they are currently working on it. But really, I don't know how far along it is in the process or how far along it has to go.

COMMISSIONER MCGRIFFGAN: Mr. Chairman, the norm regulation that CRCPD worked on I think was two decades or approximately. So it is a somewhat slow process if they are at the very beginning stages, which it sounds like they may be.

CHAIRMAN MESERVE: Well, that may well be. It may not be a real option, but it sounds to me like there is a counterpart for the NRC.

MR. HOWSTEIN: Paul Howstein, Travel Programs.

Chairman, I believe that the Committee is addressing amendment to the suggested state regulations to address some of the earlier changes that NRC had made to its uranium recovery regulations. They have explored the issue or the concept of maybe working in parallel with NRC if we were to go forward with the Part 41 rule. But I believe that they've really not started any kind of extensive effort.

But what we can do is check and verify, and see where they are in this process. But I know one of the things we've tried to explore with them is this concept of maybe working in parallel so we'd have a suggested state regulation, at the same time, we'd have our regulation, to try to facilitate the process.

But it is certainly an option. It is certainly another option that's similar to the first option, which is the alliance option, using the states as a mechanism to help develop the regulatory base.

CHAIRMAN MESERVE: Thank you, Paul.

On slide 5, you have a discussion of your actions and interactions with EPA and I think some states. If I understood the main theme of this is that not only is it legally required that there be an EPA counterpart program, but they are not duplicative of one another, at least in EPA's view. Our program is not duplicative of theirs.

There is I think the argument that NMA has made to us today, that there is duplication with the states, and that we therefore can rely on the states. I mean the argument would be that then we could reduce our effort by relying on the states because in some sense it may even be more comprehensive than us.

Does the staff have any view on that issue?

MR. LAYTON: That is certainly our goal, is to see whether we can indeed rely on those reviews from the states.

The one thing that we have learned in talking with the states is that although each individual state says that their programs are comprehensive and protective, we do notice that there are subtle differences among the states. The difficulty then comes to us of which of these subtle differences do we adopt and which ones do we not adopt in a broader scope.

CHAIRMAN MESERVE: I don't think it's a problem if the states are more stringent than we are, then obviously they comply. The issue would be where there are areas where they fall short.

MR. LAYTON: That's correct, yes.

CHAIRMAN MESERVE: And how significant those are.

MR. LAYTON: We identified one or two items where the states are less stringent than we are.

CHAIRMAN MESERVE: But isn't the answer to that, I think NMA would advocate, is rely on them where they are at least equal or more stringent. If there's some items that you need to scrutinize because we are different from the states, that we just focus on those areas.

MR. LAYTON: Agreed.

CHAIRMAN MESERVE: How are we going to explore this? I mean how is this going to move forward?

MR. LAYTON: What I had planned in working with these states was initially making the contacts with the cognizant individuals in the states, and letting them know that we were embarking on this process. At least in the interim, conveying a lot of information through the Internet and email and through phone conversations, and try to get all of this really up to the same level of knowledge.

Then hopefully, in the June workshop, where a lot of these state representatives will likely be in attendance, that we could finally meet face-to-face and discuss some of these issues, then see where we can proceed from there.

MR. WEBER: It's important to point out, the staff has ongoing contact with their state equivalence, because as Mike has alluded to before in the Crow-Butte review, we worked with the state to understand what requirement they are imposing and how do they interpret their own programs and so forth. So there is already a rapport with the state counterparts.

Now what we need to do is explore that, and try to develop it into the way to see to what extent can we rely on state regulation in lieu of NRC review.

One of the complications that has come out though, and I think Mike discovered this in his discussions with some of the contacts, is that if NRC were to do that and then something were to go to hearing, one of the logistical constraints would be we may then have to call on the state to participate in that hearing. That's something that we need to explore because it's not always apparent to us that they operate in the same sort of regulatory domain that NRC is accustomed to under our rules and procedures.

CHAIRMAN MESERVE: On your slide 7, which has to do with the status of actions, you have indicated that you are pursuing issues as to surface water discharges for in situ leach facilities. What exactly are you doing?

MR. LAYTON: At this point, it's been an issue that's raised as -- well, you are aware of the letters that have come into you. We have yet to really develop a firm action plan of how we plan to interface with the state of New Mexico and the licensees. But we do know that that is an area where we do have to work on some coordination and pursue this.

CHAIRMAN MESERVE: This is basically a coordination issue, is what you are focusing on?

MR. LAYTON: Right now, yes.

CHAIRMAN MESERVE: Good. Thank you very much.

Commissioner Dicus had indicated to me that she apologized for the fact that she had to leave. I had not realized that beforehand or I would have called on her first. So for the record, I apologize to her. She did express her regrets that she would not have an opportunity to ask questions. There may be some follow-up that she may want to have with you upon reviewing the matter.

Commissioner Diaz?

COMMISSIONER DIAZ: Yes, thank you, Mr. Chairman. Actually I have a series of very specific questions to the staff. But in deference to the excellent job of my fellow Commissioners have done in exploring all the issues, I will task my staff to get with you and resolve those. Therefore, I have no further questions.

CHAIRMAN MESERVE: Good. I would like to thank both panels for what has been a very helpful exchange today. You have brought a variety of issues to our attention. They are important to us, and they are ones that we'll be addressing.

So thank you very much. With that, we're adjourned.

(Whereupon, at 12:34 p.m., the proceedings were concluded.)