

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ORGANIZATION OF AGREEMENT STATES (OAS)
AND CONFERENCE OF RADIATION CONTROL
PROGRAM DIRECTORS (CRCPD)

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PUBLIC MEETING

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TUESDAY

AUGUST 17, 2004

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

The Commission met in open session, pursuant to notice, Chairman Nils J. Diaz, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ, Chairman of the Commission

EDWARD MCGAFFIGAN, Member of the Commission

JEFFREY MERRIFIELD, Member of the Commission

PRESENTERS SEATED AT OR NEAR THE COMMISSION TABLE:

Organization of Agreement States (OAS):

STANLEY FITCH (New Mexico), OAS Chair

JARED THOMPSON (Arkansas), OAS Chair-Elect

PEARCE O'KELLEY (South Carolina), OAS Past Chair

GARY ROBERTSON (Washington), OAS Treasurer

Conference of Radiation Control Program Directors (CRCPD):

DEBRA MCBAUGH (Washington), CRCPD Chairperson-Elect

ED BAILEY (California), CRCPD Chairperson

CHAIRMAN DIAZ: Good morning, madam secretary, I believe that before we proceed with the main part of the morning, you have an affirmation. Thank you, madam secretary. Now we proceed with the main course.

We are very pleased, the Commission and I, to be able to meet with both the Organization of Agreement States and CRCPD. These are our special partners that we work with at the states. We value the partnership. We know that we have many, many issues to cover today, and we normally wait until the end of the meeting to ask questions. I was wondering whether in this particular case whether my fellow Commissioners feel that since there are many different subjects if we can briefly ask some questions after each presenter in a rather succinct manner because if not, we are going to be here three days, and I would like to be out of here by midnight.

(Laughter)

CHAIRMAN DIAZ: With that, before I turn the meeting over to our presenters -- Commissioner McGaffigan, Commissioner Merrifield -- if not, go ahead.

MR. FITCH: Good morning, thank you for this opportunity to come to you again -- opportunity to meet with you today to brief you on State issues, to provide interaction, and to give you the chance to ask us questions in return. I would like to introduce the people here today. First, to my far right is Debra McBaugh, who is the Chairperson-Elect for the CRCPD; Ed Bailey, who is the Chairperson for CRCPD; myself, Stanley Fitch, I am the Chair of the AOS; Jared Thompson, who is the Chair-Elect of the OAS; Pearce O'Kelley, who is the Past Chair of OAS; and Gary Robertson, who is Treasurer of the OAS.

To start with, I would like to give you a briefing about the activities of the Organization of Agreement States in the last year. First one is -- deals with topics of

corporate operation. Because OAS is a relatively new corporation, specific actions are being taken to better formalize its operations. These actions include development of membership roles, which might seem to be a fairly simple idea, but this is something that had not been done in the past; creation of a strategic plan that we actually formed a working group of which I will discuss later, as chaired by Ken Weaver of Colorado, who is also the secretary of OAS. It is also co-chaired by Marsha Howard from the State of Ohio. Marty Virgilio is on the steering committee for that strategic plan. Regretfully, Marty has not had to do very much work yet; but hopefully, within the next month, he will be able to look at that plan with us.

We have also taken actions under developing written procedures and obtaining a tax exemption for OAS as a non-profit society. Even though the first All Agreement States meeting was some 40 years ago, of course, the OAS was not incorporated until last year. So we are formalizing our operations thereby.

The next topic I would like to discuss with you briefly is a resolution that was passed at last year's annual meeting of the OAS requesting revision of the NRC Management Directive 5.3 dealing with formation of working groups. A copy should have been provided to you. The revision if adopted would require adding an Agreement State co-chair to those NRC working groups whose activities affect State programs. That copy is provided for your review. A formal letter requesting revision of the Management Directive 5.3 is forthcoming. This copy is provided for your information right now.

Also, the OAS this year, we formed four working groups that were intrinsic to OAS operation.

The first was the Strategic Plan Working Group mentioned previously and is cumulating its work currently with expected completion by the first of September. Duncan

White of Region I is a member of this group.

The second group is the OAS History Working Group, which is formed to chronicle the activities of the OAS since 1994 when the last topical report was written. The History Working Group will likely complete its work before the end of the December. Kathleen Schneider, staff member of State and Tribal Programs, is a member of the group.

The next group formed by the OAS is the Agreement State Advisory Committee Working Group, which was created in response to a resolution made at the 2003 OAS annual meeting. The resolution required the OAS Executive Board to investigate the advisability of pursuing an Agreement State Advisory Committee to the Commission. The membership was concerned as displayed in the resolution by what appears to be an absence of adequate communication and accountability by NRC to the concerns and grievances of the Agreement States. The work is completing its efforts this month and will deliver its recommendation to the OAS Executive Board in time for the annual meeting. The group is chaired by Kirk Whatley of Alabama. I would like to make one statement regarding that. The working group will likely not recommend an advisory committee, according to their chair, Kirk Whatley. They think there are better options than trying to form an advisory committee. We will let you know, and we will report at the annual meeting.

The next group is an Ad Hoc Working Group that was created specifically to review the adequacy of the training and education requirements in Part 35. The group polled the Agreement States regarding their positions on the T&E rules and derived a consensus that certain rules should be revised to improve adequacy. An issue paper was developed that detailed the findings of the group. An OAS position statement and petitions for rulemaking will be submitted to NRC on or about September 8, 2004. OAS chair-elect

Jared Thompson chairs the Part 35 Ad Hoc Working Group. He will deliver a summary of the group's activities in a few moments.

The next primary activity affecting OAS this year is proposals to amend the OAS by-laws, primarily to streamline our operation. The first proposal would involve creating two at-large positions on the OAS Executive Board to assist with certain administrative activities primarily. Position one would serve as an interface with NMSS, and position two would serve as an interface with State and Tribal Programs and NSIR. Position one would focus on rulemaking compatibility issues, while position two would focus on issues concerning the Atomic Energy Act in addition to material security. As expected, these positions would serve as points of contact with NRC on matters associated with their assigned duties.

The second proposal for amending the OAS by-laws would be to create two standing committees. The first would be a rulemaking committee, which would be chaired by the at-large position number one, added to the Executive Board. The committee would be called on from time to time to review rule material for adequacy to recommend to NRC and the Agreement States possible changes. It would also review compatibility categories to recommend possible changes. In a sense, this would be a standing compatibility committee that would take a look at the various rules, do analysis on the compatibility categories assigned by the Commission and to make recommendations if they see fit.

The second committee would be assembled to review and revise the OAS strategic plan. The strategic plan would be revised annually. It will be proposed that the OAS past chair will chair the Strategic Planning Committee. The primary reason for the past chair is so that institutional knowledge can continue for one year. Also, we would only want that institutional knowledge within one person to reside for only one year so we can

have new ideas keep moving through.

The next activity will likely be deferred to completion until next year and that regards a national radiation policy. Non-uniform radiation protection standards in enforcement are a concern not only for licensees but also the Agreement States. It is for this reason by a 2001 resolution that OAS is looking at requesting Congress to amend associate statutes to allow for a single agency to set standards. As it was in the past with the old Federal Radiation Committee, I believe that was their name, which set the standards, the states are concerned by what appears to be some conflicts between implementation by NRC and by standards set by EPA. There seems to be a certain lack of trust on the parts of States for the EPA. They trust the standards setting of the NRC. They also trust the fact that the NRC bases its decisions on risk models instead of forever trying to drive the standards downward. There has to be some justification. So the States are concerned by what appears to be a constant lowering of radiation protection criteria to achieve ever lower and lower standards. Also, there is concern by the fact that there has to be an MOU between the EPA and NRC on remediation of closed sites. The States believe there needs to be one agency.

In addition, our distant colleagues at Health Physic Society believe somewhat the same way that there needs to be one body to assess the standards. Then that body would base their decisions upon the conclusions of the ICRP. This is the primary feedback that we have gotten from the States. We will be holding a panel discussion at this year's annual meeting in King of Prussia where we will have several people, some people from industry, the Health Physic Society, for the OAS to talk about this. In the coming year, Jared Thompson, who will be chair then will likely be pursuing this issue to determine whether or not a letter should be submitted to Congress to request that. That completes

my portion of this presentation.

CHAIRMAN DIAZ: Well, thank you, Mr. Fitch. We appreciate you updating us on the business and organizational activities of the OAS. I do not know whether there are any particular questions or shall we proceed to the next presentation. I think that was very good that you brought the issues forward. We then continue with, I guess, Part 35.

MR. THOMPSON: Thank you. As Stan mentioned, we had formed an Ad hoc Committee because there was some concern from some of the Agreement States regarding the Part 35 T&E requirements in the current rule for Part 35. The Ad Hoc Committee sent out questionnaires to the Agreement States and asked what they would find to be an acceptable number of didactic training hours for four categories of authorized users of the authorized nuclear pharmacists referenced in Section 35.55 and the other authorized users in Sections 35.190, 35.290, and 35.390.

There was an agreement among the States that yes, there needed to be some breakdown specified for these particular authorized users, but, we could not agree on what that breakdown should be among ourselves. So the direction that we received from membership was to come back with a formal position statement to the NRC -- well, not to NRC, for ourselves -- specifying what we feel like needs to be done to address this -- what we feel like is an inadequacy in the rule. The position statement addresses the T&E requirements, and we are specifically asking that the Commission specify a minimum number of didactic training hours for those four authorized users that I previously mentioned.

Basically, Sections 35.55, 35.290, and 35.390 requires the authorized nuclear pharmacists and authorized user to receive 700 hours of training and education as related to the use of the radioactive material authorized under those sections. Section 35.190

requires the authorized user to receive 60 hours of training and education for use of radiopharmaceuticals used primarily in diagnostic nuclear medicine studies. The minimum number of the didactic training hours for radiation safety are not specified or broken down. Other authorized users in Part 35 have a specific number of required didactic hours specified in the rule. The current Part J, which the Commission just extended a year, does specify a minimum number of didactic training hours for all authorized users in the medical field.

OAS believes that the need for specific didactic training hours is not a practice of medicine issue but a radiation safety issue. Radiation safety for the patient and the occupational radiation workers may be likely compromised. A majority of radiation safety principles and procedures are learned during the classroom and training -- classroom and laboratory training time.

The T&E requirements of Part 35 have been designated as a compatibility B for Agreement State compatibility in an attempt to provide nationwide consistency in uniformity. The higher the compatibility classification, the more prescriptive and more specific the rule text must be to ensure that all the Agreement States and the NRC regions can be uniform and consistent. The lack of clearly defined didactic training hours for these authorized users weakens the rule's consistency and uniformity. The OAS board unanimously approved the position statement and presented it to the membership for approval. An overwhelming majority of the Agreement States have approved this position. We have 30 signed statements from the Agreement States approving our position statement as we have presented it. The OAS position statement requests a petition for rulemaking to revise the current 35.55, 35.190, 35.290, and 35.390 in which the NRC defines and specifies the minimum number of didactic training hours for the authorized

nuclear pharmacists and the authorized users. The position statement does state that the rule specify a minimum number of required didactic and supervised clinical hours for the alternative training pathway, but the rule text does not specify a minimum number of didactic and education training hours for the board certified authorized users. Therefore, the petition as written would be applicable to both the board certification and the alternative pathway. As Stan mentioned, we are pushing forward to have the formal rulemaking before the Commission before the annual meeting. He said September 8. We intend to have that before you. Thank you.

CHAIRMAN DIAZ: Thank you, Mr. Thompson. I think we all are familiar with this issue. We have been dealing with it for quite some time. Commissioner McGaffigan, do you have any questions?

COMMISSIONER MCGAFFIGAN: Well, I mean, I just have a frustration that we went through a very long process on Part 35. We had numerous -- we had pre-proposed rule text out. We had proposed rule text out. We had final rule text, which we took several months to vote on so everybody could have one last look at it. We did get -- the main comment I recall from the Agreement States at the time was that we should not make the T&E compatibility B. We decided otherwise. We had several discussions and meetings like this in public on that matter. But I do not remember this issue coming up in that long process. Our rulemaking resources are very thin at the moment, and we have a very large -- I mean, I have commented to my colleagues in budgeting space that I think we have the largest rulemaking campaign underway at the moment since the early 80's after the TMI event. And those rulemaking resources are already fully applied to our rules that are on our plate. So -- as I say it is more a frustration than anything. I am not sure there is a problem here. Obviously, we would not have arrived at rule the way it was without some

input that this was the correct path, presumably from the medical community. But I just warn you that this rule may -- a petition for rulemaking coming in -- we'll look at it, and staff will advise us on it, but it is going to be very hard to resource it. Even if the staff decides it is a good idea, which it may or may not. But I -- that is the comment I would give you.

CHAIRMAN DIAZ: Commissioner Merrifield.

COMMISSIONER MERRIFIELD: You know, I would agree with the amount of time we certainly spent on Part 35. There were a lot of issues. We felt we tried to address the vast bulk given the many differing interests involved with it. That having been said, certainly I would be happy take a look at a submission that OAS would have in this matter and consider it subsequent to our staff views.

CHAIRMAN DIAZ: I think maybe a little bit of history when Commissioner McGaffigan and I arrived at the Commission, there was a new Part 35 that had just come in, and we took a look at it. And we said, *Yuk. It is just not going to do it.* And that was eight years ago. So we all want to get this under due process so everybody knows what to do. We appreciate your viewpoint. We will, of course, consider it. We do have, you know, concerns that maybe we have done most of what we should have done, but there is always extra things that we need to take a look at. We will take a look at it, and we will consider it, like Commissioner McGaffigan said, among all the other things that is we have to do. With that, I think --.

MR. FITCH: I wonder if I could make one comment to that.

CHAIRMAN DIAZ: Sure. Sure.

MR. FITCH: -- the fact that the OAS is committed to working with the NRC on this issue. The NRC has a newly formed T&E Working Group. I have instructed the OAS Ad Hoc Working Group to work with those people to inform them of OAS activities so

they can also get some knowledge from NRC's working group as well. That way we can work together on this. Our Ad Hoc Working Group is just purely to hear our issues and to do a proper analysis.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I just -- I pulled out 35.55 for authorized nuclear pharmacists and it basically says that they -- is certified as a nuclear pharmacist by a specialty board whose certification process includes all of the requirements in Paragraph B of this section and whose certification has been recognized by the Commission or has completed 700 hours in a structured educational program consisting both of didactic training in the following areas (there is a list) and supervised practical experience in the nuclear pharmacy involving blank. If you have 700 hours, and I am just trying to understand this, if either path, they are supposed to have had 700 hours of either didactic training or supervised practical experience in the nuclear pharmacy. And you're basically saying you want to us to carve out in that 700 hours some number of hours for the didactic training as opposed to the supervised practical experience. Is that right? That's your position?

MR. THOMPSON: That's right.

COMMISSIONER MCGAFFIGAN: Okay. Mark me down as a skeptic.

(Laughter)

CHAIRMAN DIAZ: All right. Any additional comments before going to the next subject?

MR. THOMPSON: I would like to make one more comment in regard to this rule, and it is a matter that affects the States greatly, particularly when it comes to medical areas. Almost all the States now have some -- particularly have to deal with the issue of PET. The way the rule is written now does not adequately address how we as a State can

handle training for PET. Because once they feel like they have met the Commission's training, PET being a little bit more broader, higher energy, there is little more risk involved. We feel like that maybe -- and this is particularly related to the 290 authorized users -- that this is another reason we feel like there needs to be some addition training. It would help us on our end.

COMMISSIONER MCGAFFIGAN: But our rule as you say, it is PETs -- I think you used Fluorine 18 and that is clearly in your jurisdiction. And you could presumably carve out a didactic training piece, do whatever you want in that area because that is your call. I have had a few PETs. I can tell you, the guys are very careful --

MR. THOMPSON: Yes, they are.

COMMISSIONER MCGAFFIGAN: -- in what they do.

MR. THOMPSON: I think a lot of that problem comes back to the compatibility B requirement of what one State would do versus what another State would do.

COMMISSIONER MCGAFFIGAN: But compatibility B would apply to everything but Fluorine 18 and PETs.

MR. THOMPSON: It causes some lack of uniformity between the States because they are abiding with what the NRC is following with, and they look at you as the benchmark. And that is an issue, you know. The transboundary issue was what you based the compatibility B issue, the compatibility B designation and that goes a long way. It goes even to what we regulate to a certain extent.

COMMISSIONER MCGAFFIGAN: But you also said -- do you have a number? If you guys were doing in 290 for PETs scan for people who handle Fluorine 18, what is it that you would -- do you guy as a group, were you able to arrive at a number?

MR. THOMPSON: We had a range of numbers. As I mentioned earlier, we come up with only one, the 35.55, the pharmacists is the only one we came up with that the group agreed to a number. The other three, we could not come up with a number that the States could agree on.

COMMISSIONER MCGAFFIGAN: Okay. We will leave it. We have hit this one hard enough.

CHAIRMAN DIAZ: Yeah. It does show the issue has different perspective and solutions, but we appreciate you bringing it to us, and I will certainly consider it. Let's see. Next one is the Progress International Material Program Pilot. Is that right?

MR. O'KELLEY: Yeah, I think I got that one. Good morning. I do not want to bore you too much with repetition of what you have already been briefed from NRC staff on the national materials program. An update on pilot four that OAS has the lead in, we have identified a topic and that is the I-125 seeds for non-palpable risk lesion location. We have made very good progress on that in a very short time since we started real late in the game getting that done. The working group has done a great job with it; and, hopefully, we will meet our deadline and be able to present that in November along with the reports on all the other pilots. Some generic issues that we are seeing with the national materials program, and these -- a lot of them are State issues in that we as an organization need to improve our efforts to impress upon the States their need to not only budget for participation in the national materials program, but also to bring staffing levels up to be able to fully participate. As you know, and we have talked before that a lot of the work that is being done on working groups now, participation from the States has pretty much been an effort by a very few individuals. We have people that are willing to step up. We have States that are committed to it and are willing to provide the staff to participate. We have a big challenge

ensuring we can get other States on board to also step up to the plate. It is an issue that we have been dealing with. It is an issue near and dear to my heart with trying to find volunteers to serve on working groups. But it is a challenge for us to do that.

We also have -- it has been brought to our attention, and we have been considering it that under national materials program, there needs to be a process developed, outlined, approved, written, bound for insuring stakeholder involvement. I think that is an area where we need to look at and address so we can make sure we get all the input we need to make best decisions possible. Some suggestions for improvement or some concerns that we have seen, we have -- with some of the working groups we have now is that we have seen a little indication that people outside the working group are having some influence within the working group in that when a member from a staff goes and discusses issues with their bosses and then comes back and gets back to the working group that, *Here's what my management says*. It sometimes appears to be causing some other NRC staff members to say, *Wait a minute -- I'm going to have to go with what NRC management said instead of just what the working group comes up with*. It is understandable that the members of the working group do take this back and discuss the issues so they can provide the best input into the process. However, we need to be very careful that the process is not skewed or biased because of input from one person and the impact it may have on other NRC members on the working group.

We have seen possibly a need for better education of some NRC staff on the working group process as well as State staff. I think if we can make sure that the folks that are on working groups, especially for the first time, are familiar with Management Directive 5.3, are familiar with the process by which the working group should -- are designed to operate. It is commendable that NRC has been trying to get a lot of additional staff

members involved in this process. I think, you know, we may need to take a little time to make sure they understand it, going into it a little better.

Probably, the last issue that we really need to consider when actually finalizing the national materials program -- I know some of pilot one is looking at the setting of priorities and how that is going to be done. I think we also need look at the make up of how we are going to do working groups in the future. As Chairman Diaz stated, that this is a special partnership, and we want to make this a very true partnership and looking at maybe a more balanced membership of working groups with a few more State folks. Because I know, we -- and it is probably just some of the State folks on some of the working groups feel like at times they are out numbered and out gunned and they don't feel like that no matter what they say, that they can be overruled. So with a true partnership, if we can look at a mechanism for improving the make up or the ratio of State/NRC members when we get to the full national materials program.

This being my last briefing as a member of the OAS board, I would like to thank the Commission for their willingness to meet with us and discuss issues with us. I have been very, very pleased with that. I would like to thank specifically Commissioner McGaffigan for his efforts to bring the States into the security arena, getting us involved with the working group on clean up standards after the terrorist event. His efforts to put on all of NRC's efforts to host the security workshop last summer with all the homeland security folks, your efforts to help us meet with and discuss issues with the Department of Homeland Security, I'm very, very grateful for that. And I just want to say thank you for everything you have done to help us.

COMMISSIONER DIAZ: Thank you, Mr. O'Kelley. I think we all know that we each have responsibilities that we all have to fulfill, and sometimes they do not exactly

match in every frequency. However, we do realize that we have to exercise those.

Commissioner McGaffigan?

COMMISSIONER MCGAFFIGAN: Well, I really don't -- I mean I don't think Pearce raised any particular things that jump out at me. I appreciate the presentation and will look into the Management Directive 5.3 issue that you raised that people should be familiar with it.

COMMISSIONER MERRIFIELD: Yeah. I guess the only two things I would say, obviously, we are going to take a look at the results of the pilot program as they come due in October-November time period. And I think based on the analysis of how that works, we will see where we go from here. I just want to -- so there is no misunderstanding at least I think in my standpoint -- we agreed that we would consider doing the pilots and analyzing this. I do not think that was, at least from my standpoint, was not necessarily instructive of a particular outcome. So we will take a look at how it goes.

In terms of our staff, yeah, we can certainly talk to our staff about our Management Directive. I think our staff is sensitive as they should be that we are like any other hierarchical organization in that it is the Commission that sets the policy and they certainly in due regard do not want to get too far out ahead of the Commission. And senior management appropriately has a function in making sure that a junior -- a more junior level staffer is not speaking the way which is inappropriate for the way in which the management or the Commission thinks. As a manager, I am sure you would certainly appreciate that.

MR. O'KELLEY: Oh, I do. And I understand the issues and it is going to probably take a while for all of us to work through it and find a process we are all happy with and believe in.

COMMISSIONER DIAZ: Well, I think I have little to add except that we all

realize that we come at all of these issues with a common purpose. But we come at it from different organizations, and you have problems within your organization even arriving at some numbers for the training requirements, the didactic training requirements. We want to work with you to minimize the number of issues that we cannot resolve. However, having said that, we must realize that there are going to be issues; and we believe we need establish a series of requirements that allow us to discharge our responsibilities, and we want to work with you. But there will be times in which we will not agree. As long as we are occasionally realize, we are going to disagree but still keep doing our responsibilities the very best. I think we are all doing very well.

With that, next subject I believe OAS pending action on the resolution for a national radiation policy.

MR. BAILEY: I apologize. I had discussed that previously.

CHAIRMAN DIAZ: Okay. All right. Thank you.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, in that case --

(Laughter)

COMMISSIONER MCGAFFIGAN: I absolutely understand the spirit and agree with the spirit in which that is offered. We all share the same frustration, but I think looking to the Congress to solve this issue -- I once had back when I was younger as Chairman Diaz likes to say when I first got here, I had the naive hope of things like that happening. And there are various letters that Shirley Jackson sent to Congress in the 1997 time frame and I think again maybe in 1998, but we never sensed any deep enthusiasm or interest. We are asking people to resolve issues across committees, which is always hard, in fact, multiple agencies. I think we should all continue to say what you are saying. I do not think -- I mean, my hope of any sort of near term action is not high. I think we would be

much better off if there were a single entity that set radiation standards, and I think we would be capable of doing it. I would be even happy to have a revived Federal Radiation Council that, you know, some sort of entity separate from us that made decisions in this area that we had to live with if it were a bipartisan body whose members were confirmed by the Senate and who hopefully would be separated from the political pressure that sometimes affects executive agencies more than us, I think. But it is a long shot that would occur, and you are almost sure to find that other agencies would, particularly the Environmental Protection Agency, which opposed Chairman Jackson's 1997 and 1998 legislation -- would almost surely oppose your resolution. So, in Washington, it is a lot harder to do something than it is to block things. Blocking things is what happens most of the time. And that is why we ended up with the MOU. That's why we, which is a less than perfect instrument in many ways, potentially kicks issues down the road. But we ended up there as the second best alternative that might get us moving in the right direction. So there is not really a question there, it is just a comment on the fact that your hearts are exactly in the right place, but the solution just may not be implemental.

CHAIRMAN DIAZ: Commissioner Merrifield?

COMMISSIONER MERRIFIELD: I hesitate to agree. Normally, I'm happy to agree with --.

(Laughter)

COMMISSIONER MERRIFIELD: I hesitate to agree with him, but I think he is right. It is a very frustrating circumstance in which we find ourselves, and it does not make good national policy that is reflective of the impression that you have drawn in your resolutions and considerations, and we have come to a similar conclusion. But it is so far what it is.

The one additional point I think I would put in, I agree with Commissioner McGaffigan that the MOU with EPA was sort of a second best option for us. That having been said, I think the overall spirit and nature of the relationship between our agency and our counterparts over as EPA is enhanced and improved from where it was some years ago. So being the one who likes to see the glass as being half full, I think that our efforts to negotiate that MOU and our efforts to communicate since the MOU have improved on the nature of the relationship between the two agencies, which I think is in the public's best interest.

COMMISSIONER DIAZ: Thank you. Commissioner McGaffigan frequently accuses me of being an optimist.

(Laughter)

COMMISSIONER DIAZ: And he is probably right. I do believe that we all know this is a difficult road. However, I think what you hear from us and what we hear from you is that there is no doubt that there should be a better way to handle nationally and cross-boundaries radiation protection issues in a more uniform manner because it would be best for the people of this country. How to get there? We don't know. But keep trying is not a bad thing, and we are going to do our best. We are doing better with EPA. We have been able to agree on a series of issues. I think that everybody is learning a little bit more, and I am pleased that you realize that a more uniform radiation policy across the nation is the right thing to do, and I encourage you to keep trying. That is certainly the good American way, and let's go for it.

With that, we will go to our next subject, State feedback on the clearance rule.

MS. MCBAUGH: I guess that is me. I am on the working group actually for

the guidance documents. So I have been able to be involved this. Of course, I have been involved for a long time. But we have two major issues and one of them I was please to hear that the uniform that we all agree, that uniform guidance and national policy would be good if we can get it and that is especially true with the clearance guidance. We would with that standard having a uniform one that was across State boundaries and internationally as well would be very helpful and with measurable concentration levels. We all know that is what we would really like. The difficulty of that, of course, we also recognize. As States, we also wanted -- we had really pushed to get unrestricted values. That's what we wanted was an unrestricted clearance rule because we do not want there to be something that States then have to deal with because it has been restricted, and it was put out in a certain restricted manner in some State and then maybe another States has to track it because it does not follow their rules when its gets there. So that was our goal, and I recognize that is not what is going to be the first step forward, will not be the unrestricted release. But that is where the States were hoping to end up with. So those are our two main points.

I have enjoyed working on that working group, and I will say that we as States -- there are two of us on there that are from the State realm -- we been given every opportunity to make comments and have been listened to and people have really worked, which is hard because I am in Washington State. So it nearly always has to be by phone, but I have felt so much part of the working group. I wanted to commend that because it has been a very good thing. So did you have -- I am good? Okay.

CHAIRMAN DIAZ: Any other comments?

COMMISSIONER MCGAFFIGAN: I don't know. You presumably have been following the EPA rulemaking or advance notice for proposed rulemaking that would

presumably parallel ours. And you know that there has been a fair number of negative comments received by EPA. Positive comments from us, and I believe some Agreement State folks and others. We had one case several years ago where we did -- I forget whether we did it or EPA did it -- e did a rule that would allow low level waste sites -- I look at Pearce -- to accept mixed waste if they wanted to. And we expended a fair amount of resources. We coordinated with EPA on that and everything was hunky-dory, except all three States, respectfully, declined the honor of doing that at their sites: South Carolina, Utah, and Washington. I guess I have got two of you here. And I'm just a little concerned about -- this is a real resource issue. You sort of have to get alignment, as you said, you need uniformity here. And things may take a significant period of time. We do have DSI 161 that is in fairly final form, presumably ANSI, and Health Physics Society will take a look at DSI 161 when it is out and see if they want to amend their current consensus standard do bring it into alignment with it. It is not far out of alignment, but if we are going to have a crack at this sort of international uniformity that you are looking for, that might be a place to start.

And then I sort of throw out to you just as a question, if the rulemaking can not be done immediately, would a guidance document that updates the existing NRR and NMSS guidance, which are not themselves identical, and provide a uniform guidance for NRC sites while we waited for the parallel rulemakings to eventually kick into gear, would that be a potentially useful first step in your view, having consistent NRC guidance that maybe the States could adopt?

MS. MCBAUGH: I think others ought to comment on this too. I know from our standpoint in our State, it is very difficult for us to use guidance and adopt that we have to have a rule to adopt. Because in our State, regulation can only happen if we, usually if

we have a federal regulation that we can adopt, it is much more difficult for us to start essentially ground zero if we just take a guidance and go. So that is not likely to happen. And I understand the difficulty with coming up with this number. It is not going to be an easy thing. I think it goes along with your idea that we should all be hopeful and just keep trying. That's what we have been doing all along with these kind of numbers. I think we have to -- that the goal is to get it, but I think any small steps we can do to get there is useful. So I am not opposed to a guidance document. I been working on that one, and I think it is a good thing to have, but we cannot adopt from that.

COMMISSIONER MCGAFFIGAN: That would not solve your problem at the State level?

MS. MCBAUGH: No. It would not.

COMMISSIONER MCGAFFIGAN: Okay. It would solve our internal problems at our sites probably. But if it does not help 35 States, maybe it is a problem.

MR. BAILEY: Could I make a comment on that a little bit?

COMMISSIONER MCGAFFIGAN: Sure.

MR. BAILEY: Sometimes even when you have a regulation, it does not help.

COMMISSIONER MCGAFFIGAN: I know.

MR. BAILEY: In a few States --

COMMISSIONER MCGAFFIGAN: I hear rocket science coming out of your mouth.

MR. BAILEY: In a few States, where we have requirements similar to those at the federal level, it is a very small amount of difference in the resources we have to expend to adopt the same kind of rule as you have to expend. So for a State like California to go out and do this would almost cost as much money and probably take as long as it

would for the Federal government to do. It is made even more onerous if we do not have a federal model we can point to. Some people on the west coast will still accept things that come out of the Federal government as being possibly right.

(Laughter)

COMMISSIONER MERRIFIELD: That's a heavy burden you're under.

(Laughter)

COMMISSIONER MERRIFIELD: My wife is from California, and I know California. So I am willing to ascribe to that comment.

COMMISSIONER MCGAFFIGAN: Okay. Well, thank you.

MR. BAILEY: All right.

COMMISSIONER MERRIFIELD: Mr. Chairman, on little bit of a different note and I appreciate the conversation that has gone off today. I would like to take us slightly off point. Right now, our agency is involve in the largest -- in conjunction with our licensees -- the largest decommissioning efforts that we have under seen -- in terms of the formerly operating reactors that are under decommissioning. I forget what the numbers are now, but it is eight or ten sites have very active decommissioning activities underway right now. I think there is some great lessons for us as an agency, for our licensees, and also for the States to consider because obviously, while we have re-licensing of reactors going on right now, there will be some point 20, 30, 40 years down the road where we will have yet another wave of reactors that will be decommissioned. Among those lessons -- and I try get out and go to those decommissioned reactors, and I have actually been to all of the reactors that is we currently have under decommissioning. One notable example came to mind this summer, which is Big Rock Point up in Michigan. And at Big Rock Point I think a unique and noteworthy partnership that has been undertaken between the licensee, the

State, and I believe it is waste management in which certain levels of concrete demolition debris from the Big Rock facility are being allowed to be disposed of at a very major landfill. And in that particular case, a lot of work was done by the licensee and by the waste disposal company to work with the local community and others to provide assurances that that level of activity would be protective of the public health and environment, in the environment. That included things such as the willingness on the part of the licensee to pay for portal monitors at the waste disposal facility and mirror those very same waste portal monitors at Big Rock Point. The licensee also provided around \$200,000 I believe. I do not know the exact number, but basically the money was sufficient for an individual to be hired that would be independently overseeing the efforts and able to report back to the community and others as to what was going on in those disposable activities. Further, the analysis that was conducted recognized the fact that the level of material going in the waste disposal facility had less overall activity than the background that was that site. Now that may be somewhat unique in that area, but it was what it was.

In addition, the amount of the material -- the total amount of material going into the waste disposal facility -- I forget the exact number -- comprised about 2 percent of the overall material being disposed at the facility on a yearly basis. When I stay the amount of material from the facility that is over the lifetime of the decommissioning activities. So a lot of things to be learned from this particular example where an opportunity to dispose of a lot of slightly contaminated material was allowed to occur, fully recognizing the desire of everyone to protect public health and the environment but got a good outcome from a public policy sense.

So I guess in sum, what I would like to encourage the CRCPD to do and certainly OAS as well is to look at examples like Big Rock Point and perhaps some of our

other facilities to see if there are ways albeit this is opposite of the direction you would like to go with the national uniform standard, but in the intervening time period, are there ways to identify facilities where disposal can take place and get positive outcomes for all participants. And I think Big Rock Point and what they are doing right now is certainly an example of that. Thank you, Mr. Chairman.

CHAIRMAN DIAZ: Thank you, Commission Merrifield. As you know --

MR. O'KELLEY: I just wanted to add a little bit. We are doing something very similar on a decommissioning project in South Carolina. One of the issues we have run up against with that is really a clearance rule would really help with is the facts that our EPA -- State EPA counterparts -- were very reluctant to approve and allow very, very slightly, slightly contaminated materials to go in anything other than a low level radioactive waste facility. One of the issues that they were concerned about was not so much that the threat of the material that we were trying to dispose of, but they were real concerned about the interstate commerce implications and the opening up of State industrial landfills for out-of-state waste like this. So I think a clearance rule would really help ease some of those concerns.

COMMISSIONER MERRIFIELD: I think it is a point well taken, but again I would recommend as an example to take a look at what they did at Big Rock Point and are there some lessons be learned from the approach they took, which is a very holistic one to try to incorporate the desires of people in local communities and try to provide a level of assurances that would tamper down what was some of the concerns by their counterparts within environmental agencies in Michigan.

MS. MCBAUGH: Well, that did make me think because one of the issues that everybody is agreeing to stick with the case-by-case and that is an issue of being able

to go that. And that is a place where perhaps guidance into the different types of case-by-case that have been done with those lessons learned would perhaps be useful if we could then do case-by-case, which does happen occasionally in every State.

COMMISSIONER MERRIFIELD: And that was an example where the licensee saw it, and we did approve an exception in that particular case.

MS. MCBAUGH: Yeah.

MR. FITCH: You know, everyone has a viewpoint on this matter. And I started out as a physics technician many years ago on Title I projects on (inaudible). And I remember having to do the clearance survey, the various things. So some of that is very near and dear to my heart. Just what does constitute something that is no longer being a hazard to the public health or to environment? I was at last year's workshop in which Deborah was at where these issues were discussed. Obviously, there are special interest groups there that regardless of the viewpoint that comes up, they are against anything coming from a reactor facility, for instance, that might be sent as clean strap. So they are not willing to accept the argument. However, I must remind everyone that it was Congress that claimed BRC in law. They said that the Commission could base regulations on contaminations -- or contamination or doses that are below regulatory concern. So I think that it would be appropriate to continue this discussion. In my State, we have had licensees who have request the opportunity to implement the one milligram rule of the NCHPS standard. And it has worked very well. It has been very protective of the public and the environment. So I think this is an issue that is timely. I think that while it might serve well to do a guidance to get things going, I think eventually we need something that is more definitive.

CHAIRMAN DIAZ: I think that as you know we all look at this rule or potential

rule on the solid release as almost as an honest disclosure rule. In other words, fundamentally, the low levels of radioactivity that we are considering are definitely lost in any environmental analysis that you can make. However, there is that issue of public confidence that -- we have been trying to work very hard at it. In many ways, this is going to be again another one of those long roads because there is so much misinformation on the other side. But if we look at the nation as a whole and consider the levels that we have under consideration for release, we believe that this is not only protective of public health and safety, but in many ways, we are doing what this agency should be doing. We are putting the resources on those areas that provide significant radiological protection to the people of this country.

This is an area that really is way overblown from many of their viewpoints, and it really can be dealt with. And I hope we can make progress on it.

With that, we will go to the next subject. I think it is CRCPD NORM (Naturally Occurring Radioactive Materials Rules), right.

MR. BAILEY: I think I am covering that, but before I sort of do that, I want to once again pass out directories to everyone. And I may reference them occasionally. And also, I thought it was very fitting in your opening remarks that you mentioned a partnership, and I do not know what you call these things but -- well, I know what you call these things. We call them four-fold, which is better than a three-fold if you have a four-fold.

Anyway, on the front of it says *A Partnership Dedicated to Radiation Protection*. I think that sort of sums up what CRCPD is. In general, we believe a rem is a rem. We would like to boil it down to that simple.

(Laughter)

MR. BAILEY: If it is a rem, we ought to have the same standards applied

uniformly to that same rem. The CRCPD as I mentioned is an organization of all 50 States, plus the District of Columbia and Puerto Rico. We have a number of working groups in addition to the ones that the Commission has established, and I want to express my appreciation as chair for the support that NRC has given to our working groups and the liaison in support that has been provided by Paul Lohaus as the liaison to the CRCPD Executive Board.

We actually get some of your resources on our working groups from time to time that may not totally be agreement materials. But, we will accept those gladly. Speaking of working groups, I think we sort of speak with two voices on working groups and working group participation. Because quite frankly, we have difficulty getting people to volunteer; and at the same time, we keep asking for more opportunities to volunteer. I know of a number of people within CRCPD who actually take vacation in order to participate on both our working groups and NRC's working groups. And if their traveling per diem were not paid by the NRC or the CRCPD, they really could not participate because their States are not supporting them. I am bringing that up just so that you are aware of it.

The topic that I am down to talk about is NORM, and I go back to the late 70's when CRCPD set up a Part N working group to write suggested State regulation. I happen to be the chairman of the first Part N Committee, and we went through about seven iterations of Part N. Well, I am happy to announce that in the past year, we have finally adopted it. And it is available. We did not get complete concurrence from all federal agencies involved with the numbers that were put into it. We deviated from the rem is a rem policy. We did look at concentrations. But it is out there now. It is for the States to adopt, and we will just have to see how it gets applied. If nothing else, it may be available

as an (inaudible) for EPA in some of their clean ups. We will just have to see how that goes.

We are interested in the recently introduced federal legislation regarding NORM and would really as much as you possibly can give us some feedback on sorts of the Commission's view of that legislation and whether or not it is an effort that you think that we as States should be doing what we can to make sure it occurs or does not occur. I think we need your input on that. As has been stated earlier, the States have almost uniformly for the few years I been associated with States, been in favor of one federal agency regulating radiation. And I think that continues to be the emphasis that most of the States would place on it. There are concerns, of course, with essentially the federal government now getting into NORM. In a few States where they have had NORM regulations, they are concerned about what happens when there is a new federal framework put on it. What if that federal framework does not match theirs? What if it is totally different? So there are some States that would not -- I do not think support NRC getting NORM. And I think we are aware that the medical community is not particularly thrilled about the idea because, as has been mentioned, it gets the NRC into PET, which sort of gets them into accelerators, which then goes and goes and goes.

I think with that the only thing I would add to what I have said already is that we will have our annual meeting in Kansas City this year in April. We invite you, all of you, at any time to come to the meeting. And we really appreciate the supports that NRC has given to the annual meetings. In particular this last year, I think half of the poster sessions must have been done by NRC. And I have to say, they were all great posters. So we do have a partnership with you, we are standing ready to assist. We certainly leave a lot of the controversial issues up to our members. I see he took off -- he had on a CRCPD pin

earlier but took it off since he was representing OAS. So we hardly know who's who. But we are we, and we would like for you all to consider us as part of you too. Thank you. I will answer any questions or whatever.

COMMISSIONER MCGAFFIGAN: Could you tell me which bill are you referring to when you say there is a NORM bill that is introduced -- you referring to the NARM legislation that Senator Clinton introduced?

MR. BAILEY: Yeah. I'm sorry. Yeah.

COMMISSIONER MCGAFFIGAN: That is essentially legislation that we had previously -- Chairman Diaz had submitted to Congress about a year ago in response to a request by I think it was Congressman Tauzin and others. So that is a provision we support. It is very narrowly drawn. It does not get us into -- you know, it is aimed at accelerator produced material and discrete sources and basically at Radium 226, which is likely to be the only radionuclide that gets covered. And so, and we discussed with the Advisory Committee on Medical Uses of Isotope, there are some potential issues with the medical community that we believe we can work out, and we committed that we would work with them if the law were enacted. It is motivated in part by security concerns with regard to discreet sources and reflects our Commission view.

So we do support it. There are some potential changes that I think Commissioner Merrifield worked on that would allay certain concerns with regard to it. I also do not think you have very much to worry about in the three weeks that Congress gets back --

(Laughter)

COMMISSIONER MCGAFFIGAN: -- that this will be enacted this year because they just have so much else on their plate. But it is something that is in our

legislative program in the long term, and we would be anxious to work with you on if you have concerns.

MR. BAILEY: I do not think we have so much as concerns as we just want to know where we are going with it. I mean I personally first saw it last Thursday, and I think a lot of the rest of us had first seen it last Thursday.

COMMISSIONER MCGAFFIGAN: So basically Senator Clinton has picked one piece of Chairman Diaz's letter and made it her own and is advocating for it. I think the statement that she submitted when she introduced it was focused on the security realm and that is what animates her and was a major thought in our consideration as well, although not the only thought. In all honesty, we arrived at this when Chairman Meserve was here. He was an advocate for this and sort of separate from security. We think it is a step toward that uniform radiation standards setting body that you talked about early on, but it is a small step. It is a baby step. It takes an area that does not have a federal overseer at the current time and brings us into the process. But that is what motivates it. As I say, we support it but it is also something that is likely be in the new Congress, not this Congress.

COMMISSIONER MERRIFIELD: Yeah, I would -- You can put me down as an enthusiastic supporter as well. I have really tried to, as Commissioner McGaffigan spoke, I tried to do some work to try to encourage inclusion of that in some vehicles that were actually moving previously. I agree with the characterization that nothing is going to happen this year. I do think we made some progress in terms of trying to educate some folks in the Environment Committee and the House Commerce Committee as to the importance of this provision. Senator Clinton has picked it up. I think it does have some elements of support in a bipartisan way. I think that the activities of CRCPD and OAS in

helping to educate members on those two committees that are from their States, as to the utility of this provision would be welcomed. And I think those voices would certainly carry quite a ways in assuring that we are not a big bad agency nor is this something that is irresponsible. But it is something that we really do need to bring this to a system that is more consistent in its national approach.

CHAIRMAN DIAZ: Thank you. Sure.

MR. O'KELLEY: If I may comment on this. There are some State issues in this, and I think this is an area where especially in the theme of the national materials program where the States can really take the lead and help on this. We have got States that have been regulating these for -- .

COMMISSION MCGAFFIGAN: And that is our intention. We told ACMUI that when we regulate -- if the law were ever enacted, we would, be respectful of the State programs that exist. To the extent that they differ, we would have to choose one and will obviously make somebody unhappy. But the goal would be to be respectful of what is out and try to draft rules that did the minimum necessary. Our concern was more States where there may not be as much focus in this area and as much State attention. Not the Agreement States but some of the non-Agreement States.

MR. O'KELLEY: And that was where I was kind of leading. We will be happy if you keep us involved to help if you have testimony before Congress for those of us that have a lot of experience with that would be more than happy to help with that. Those that have rules and great guides in place, we really considered looking at those if nothing else, as a starting point.

COMMISSIONER MCGAFFIGAN: I think we have -- if the law were ever enacted, we would almost surely have a working group in this area that would be joint. I

mean I cannot imagine doing anything but that. And the absolute first thing they would look to is what is out there and how do we leverage that?

COMMISSIONER MERRIFIELD: Yeah. We certainly in no way would I think the Commission would want to start off from scratch but instead be reflective of the what is the state of play out there and really try to identify what are the best practices that the States have already gleamed and then try to latch on to those.

MR. O'KELLEY: And I think one of the key issues is going to be how this is going to play out in the non-Agreement States that are currently regulating NORM that are not a part of the Agreement State program. So it is just an issue we are going to have.

MR. BAILEY: And I would point out that as the keeper of the SSRCR's, the suggested State regs, the Conference will be very happy to participate in developing some uniform regulations that we can use both federally and state-wide.

MR. FITCH: Also, I would like to encourage an orderly transition when the current agreements are amended to allow for that. And also, that would mean that the OAS would have 50 members instead of 35.

(Laughter)

MR. FITCH: The States --

COMMISSIONER MERRIFIELD: Would you get a merger at that point.

(Laughter)

MR. BAILEY: We could really become we.

(Laughter)

MR. O'KELLEY: Well, the funding issue would still have to be there.

(Laughter)

MR. FITCH: But obvious the NRC will have a funding issue themselves as

far as promulgating those rules. In the State of New Mexico, some ten, 15 years ago, we promulgated NORM rules for the oil and gas industry. To this day, those rules are considered to be a model. To promulgate those rules, we involved industry plus health physicists, plus the regulators to bring about the standards, to develop standards that could work for everyone. And they are still poignant to this day as being a success for that reason that people are involved.

COMMISSIONER MCGAFFIGAN: This legislation let me remind you does not reach as far as NORM in the oil and gas industry. It is NORM and discrete sources of radiation. I think it would be a stretch to say that the -- the stuff that coats out on pipes is a discrete source of Radium 226. That is not our intention. This was a baby step.

CHAIRMAN DIAZ: But it is a small step towards what you know what we all have seen as better things. I must say that Senator Clinton is very interested. The fact that the last time I met with her, she made it the last point that this was something she consider important, and she wanted to push it. So support for it, you know, the Commission is agreeing with it. You have a role the play in that. Even if it is small, it is a step in the right direction. With that, we move onto the Homeland Security Council, CRCPD discussion on the Homeland Security Council.

COMMISSION MCGAFFIGAN: Mr. Chairman, I would just mention one thing to Ed Bailey that I commend them for getting, Subpart N may not be perfect, but it is a good document. And you worked on it for a long time, and it is pretty darn good. And I know our sister federal agency does not necessarily share that view but it looks like a bunch of folks -- I guess Mr. Collins of Illinois ended up your successor probably several times removed as the person first trying to bring this to fruition. I think they did a good job of listening to all parties and putting something together. It is typical of a statutory -- of a

regulatory process that it is not perfect but pretty darn good.

MR. BAILEY: Thank you. We appreciate it.

CHAIRMAN DIAZ: It is a good accomplishment.

MR. BAILEY: Thank you.

MS. MCBAUGH: As chair-elect of the CRCPD, we have five councils on the CRCPD, and one of them nearly created was the Homeland Security Council. I am the one in charge of that as my membership on the board. I wanted to give you just a little update on what we have been doing for homeland security.

MR. BAILEY: They're listed in the book.

MS. MCBAUGH: They are listed in the book. Yeah. So you will see that in there. And the Homeland Security Council was created just about a year ago, a little bit before that. And so we now have created several task forces. One of them is just -- has not been manned with any people, but it is going to be covering data, base security, data security, and material security. So that one will be starting up soon. The ones that have been put in place, and actually we have done a lot of work on them, one is the -- there was a panel that was set up at the CRCPD annual meeting. And we wanted to have all the federal agencies that were involved in Homeland Security come and send a representative and have this panel. And it went for a couple of hours. We had them all give presentations and then answer questions, and we had a lot of audience participation.

The purpose of that panel was to get feedback on different aspects that we might need to do some work on and then develop a paper that was a prioritized list of tasks for us to maybe create more task forces. Michael Layton was the NRC person that came and was on this that panel. That was very helpful to us. It was very well received. People really appreciated every federal agency sent someone. We had ten people on the panel,

and it was a very fruitful time.

And I can say that the document is in process right now. Just to give you three things that is we did come up with in a list of probably about ten that we will be working on. One of them was a handbook that we have all recognized we needed, one that covers sorts of rules of thumb for dealing with RDDs and INDs, Improvised Nuclear Devices. And federal and local resources so that there would be pages for people to add their own phone numbers. The way to contact them. Sort of giving people an idea for what resources are out there. Some of that we received from the panel. So we have a lot of contact names and numbers just from there.

The other two issues that we came up with was training for first responders. As you know, everybody has new equipment, and there is not a there is of training out there for the people that have all the new equipment, the first responders. So that is something we want to deal with.

And the last one that was top on our list is scenarios because a lot of people have developed scenarios for both RDDs and INDs. We would like to put them in one place on the members only web site for CRCPCD because there could be security issues with having scenarios that tell people what is a good way to do an RDD. But we want to sort of gather all the ones that people have already developed, not write them ourselves, but just gather them.

So those were the two. There is also a newly created task force. EPA is going to be expanding the Environmental Radiation Assessment Monitoring System. It is the one where they have detectors across the country. They have been there for years and years. They are going to expand that program, and we will be working with them to see where they should be set up and how and that kind of thing. And we also will be

reviewing the document that is coming out from DHS that is on response and recovery. Another one with the clean up values and what number do you actually use. So, we will be reviewing that, which they keep saying is going to come out, but it may be after election time now. But we will see whenever it comes.

And we also have as part of that council, we have -- which is something set up for every council in the CRCPD -- we have a Merging Issues Committee. What that is a gathering of people that all have an interest in this. So we have their names on lists, and we all get together and talk a little bit. But then they are a good resource for these task forces. So it is sort of a permanent group of just interested parties.

CHAIRMAN DIAZ: Well, that's excellent. Commissioner?

COMMISSIONER MCGAFFIGAN: I think the security discussion -- any substance, I will wait for the afternoon.

CHAIRMAN DIAZ: Commissioner Merrifield?

COMMISSIONER MERRIFIELD: Same.

CHAIRMAN DIAZ: All right. We will discuss this more this afternoon, but we are pleased that you are able to put groups together and address the issues.

With that, I think we go the last item on the list, last but not least, the issues of NRC, OAS or NRC support for OAS, or whichever way you want to present it.

MR. FITCH: Mr. Thompson will speak on that --

MR. THOMPSON: I know that this has been an issue that has been before you before, so I do not want to belabor the point a whole lot but I do have a concern and I guess maybe it is from a personal perspective in my State. Since March, I have lost two positions due to funding, not necessarily in my program. We are talking about funding of an agency. Sometimes I think it is good NRC in partnership with Agreement States, can

show some marginal support for a program that is done well and is doing well but is suffering because of unfortunate budget problems or just personnel issues related in not being able to hire people. Sometimes management and I am talking about usually State management, we get lost in the shuffle as to what we do. What I am really striving for here is to ask the Commission to give permission to your regional staff or your STP staff to give what I would call a generic letter of support to Agreement States that might be having some type of problems, but they have a good program.

In essence, I am looking for you to allow them to say, *Hey, give your program the support it needs to maintain adequacy and compatibility.* My State has had two IMPEPs in a row. I do not want the bad letter coming from you because I stumbled or the program stumbles. And the reason I am not that concerned about where the letter comes from, my management views NRC as NRC. It does not matter who the letter comes from, but any measure of support lends itself to being able to bring attention to the program and maybe put us back on the light again as being something they need the pay attention to. Paul Lohaus and I had a couple of conversations regarding this, and I understand your position. And I understand what you are asking. I understand you need to know I have a purpose as to what this letter would go, the criteria. Paul and I had a discussion a week or so ago, and I also willing understand that view this has an IMPEP issue. I would suggest that you look at a letter of support if the State asks for support. And I am not asking for you -- NRC -- to tell us how we do our program, just please tell my management to support us. We are a partnership, and we need your help in being able to maintain our program. But if we go to the -- what I'm proposing is that if a State asks for a letter of support, whether it -- and it goes through their region or they go through the State and Tribal Programs, that may be an MRB review is a letter of support from NRC viable? Is it

worthwhile? And let the MRB decide if maybe a letter. That way, it takes out the possibility of the letter not meaning anything. It dilutes the effectiveness of the letter.

You know, there are lots of States that are undergoing changes, particular in some management organizations. I know Texas has under gone a major re-organization. Their management not be aware of the relationship between that radiation control program and the NRC. That goes a long way in building bridges and the keeping everybody on the same plane.

So basically what I am asking is that you consider allowing your region staff, and I am talking about your SLOs -- not your SLOs, your State Liaison Officers or State and Tribal Programs, if a state requests a letter of support, to at least bring it to an MRB for consideration.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I am very sympathetic obviously to this. I think there was concern that the -- the issue was brought to us previously in which the Commission made a decision was a letter to a governor. That is a fairly profound from a Chairman to a Governor. It is a fairly profound thing, and the Commission decided that for that you really had to have tangible evidence that the program was in trouble. I think you are raising a different issue here, and I think you are not asking for a Chairman letter. You are asking for letters from regional staff or OSTP after an MRB decides it is a good thing. Simply to maintain support for a strong program before it falls into this category where there is a clear need for a Chairman letter to a Governor, which we hope does not happen all that often.

So I think there is something here. I think -- you know we were so focused on Chairman letters to Governors that we did not think about lesser letters to lesser officials. I am certainly open personally to seeing what comes out of the process here that you work

with the staff.

MR. BAILEY: May I just comment on that. When I left as head of a program that was fairly large, and we were doing a pretty good job. But we say that we needed some support. And I too discussed this. That the IMPEP process if nothing else should be able to look at a program and say, *Well, the last four year, they did pretty darn well, but my Lord, we don't see how they are going to do well next year or the next year.* And really be able do not cut off the review at the day you are there but listen to what may be going on and be able to focus that into the review. I am hopeful that the very negative findings and so forth will get us back where we should have been, and I can assure you that we were not talking about people at the Radiation Control Program level not knowing we had problems or not willing to make political decisions because I do not make those to do what needed to be done. So I think I would echo what Jared is saying is that the Commission needs to be able to in some fashion to go do a State at whatever level is appropriate and say we think you have a problem with that problem or it looks like you may have a problem with that program. And I think most states would appreciate that.

MR. FITCH: I wonder if I can make further comments. First of all, please separate this request -- who knows me by the OAS -- please consider more of your relationship directly with the individual States and not the relationship with OAS because our relationship with NRC can be somewhat controversial at times. There is an important need. As OAS chair, I have had to watch with a great deal of concern as Texas reorganizes itself or the financial problems in the State of the California and the concerns there about that program going away. I look at these programs and think about my State program back in the late 90's when we had a very poor IMPEP. And we came back and the governor at that time, said, *Well, let's make sure this program has adequate funding.*

So the legislature was put forward and we got adequate funding. Well since then, the new Governor's come along. They do not have the historical perspective that the prior administration had. So I can see even in our program how it is starting to slip. And while obviously we are quite adequate, I can see it somewhere in the future, it is going to be a problem. When Jared mentioned the fact that it is not specifically the States that come out with a bad IMPEP, it is those States who are starting to experience some difficulties due to administrative changes. Those are the ones that more than likely need the help to be pinpointed.

CHAIRMAN DIAZ: All right. Commissioner Merrifield.

COMMISSIONER MERRIFIELD: Well, Mr. Chairman, as you know, I am more inclined to act early and provide some notice where we think we have got concerns. So I am open, and I think our staff should at least continue dialogue to see if there is some possibility of having some expression in that regard. I agree with Commissioner McGaffigan. I felt a Chairman letter to a Governor was overstepping where we ought to be, but there may be other possibilities for us in a more pro-active way to be helpful. So I am certainly open to that notion.

CHAIRMAN DIAZ: I think we all make it unanimous. So we have one decision in here going forward that we will look at the issue and see which way is appropriate to provide a notice or letter or information to support the States before issues become bigger and worse and so forth.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, how many letters to Governors have you signed in the last year? I know there is at least one. There is an --

CHAIRMAN DIAZ? There have been -- no, there have been more. Probably four or five.

COMMISSIONER MCGAFFIGAN: Have there been?

CHAIRMAN DIAZ: Yeah.

COMMISSIONER MCGAFFIGAN: But I do not know whether the California letter has been drafted yet, but I think we do need to get out in front of the problem. When you are sending a letter to the Governor urging that something gets fixed, the problem is fairly far down the road at that point. We have well documented IMPEP findings, and we do not want to get do that point.

CHAIRMAN DIAZ: And not all have been problem that -- other concerns.

COMMISSIONER MCGAFFIGAN: Okay.

CHAIRMAN DIAZ: Well, with that, I think we are coming to close of this meeting. We will meet again this afternoon. You have any closing comments?

MR. FITCH: Why don't you go ahead, and I will finish up after you.

MR. O'KELLEY: Again, since this is my last briefing as an OAS officer, I was remiss earlier. And I want to go on the record as thanking the Office of State and Tribal Programs, Paul, Josie and all of their staff. The folks that we have worked with at NSIR and NMSS over the last three years have been -- you have got good people. Their hearts are in the right place. And you guys get to hear us complain and all every now and then, but these folks get it everyday.

(Laughter)

MR. O'KELLEY: And we put them between the proverbial rock and a hard place, and I just want to make sure you appreciate the job that they are doing and the position we put them in. And they have done a heck of a balancing act, keeping you guys happy and trying to keep us somewhat happy as well. And I just wanted to go on record as thanking everybody for their willingness to work with us, and the efforts they put out.

CHAIRMAN DIAZ: Well, we thank are you for your comments.

MR. BAILEY: I just want to say thank you for once again meeting with us.

MR. FITCH: I would like to before we close mention the fact that we are honored to have Region I hosting the OAS meeting in King of Prussia this September. We are further greatly honored to have Commissioner McGaffigan there to deliver our keynote address. And by all means if the other Commissioner and Chairman can come up, please do. I think we will have a good meeting.

CHAIRMAN DIAZ: I'll have a hard time getting there. I am going to be other side of the world.

(Laughter)

MR. FITCH: We would like to thank you for this opportunity to meet again.

CHAIRMAN DIAZ: Okay. Thank you so very much. Commissioner Merrifield?

COMMISSIONER MERRIFIELD: Mr. Chairman I would only say, reflecting on Pearce O'Kelley's comments, I think we do appreciate that we have got a very good office of State and Tribal Programs. Paul and Josie and their staff do a tremendous job for us. We also reflect the IMPEP Program. As you well know, it was nominated for an award and did very well in that regard. So I think we are pretty proud of that program and the people that we have who staff it. Thank you.

CHAIRMAN DIAZ: And to close, I think we should focus on all the things we have accomplished together. And the differences, they are part of democracy. And with that, we are adjourned.