

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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GASEOUS DIFFUSION FACILITIES

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON PROPOSED STANDARDS FOR
GASEOUS DIFFUSION FACILITIES

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, October 26, 1993

The Commission met in open session,
pursuant to notice, at 2:00 p.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
FORREST J. REMICK, Commissioner
E. GAIL de PLANQUE, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

TRIP ROTHSCHILD, Deputy Assistant General Counsel

JAMES TAYLOR, Executive Director for Operations

ROBERT BERNERO, Director, NMSS

BILL MORRIS, Director, Division of Reg. Applications,
RES

CHARLES NILSEN, Radiation Protection and Health
Effects Branch, RES

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

2:00 p.m.

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

One of the most interesting but challenging jobs that we've had in quite awhile is to prepare to eventually take over this curious responsibility of certifying the health and safety at the gaseous diffusion plants of the United States Enrichment Corporation. In many ways this was unprecedented. It's a technical area in which the Commission has not worked in the past. Certification is a process that is not terribly well defined. It's nothing that we've done quite before.

So, we've had to break some new ground and feel our way a bit as we've gotten into this question. We seem to have done all right up until now in the turnover, but the key challenge is the development and propagation of standards, certification standards, really health and safety standards for these plants which are due in October of next year.

So, this morning we are prepared to receive an executive summary from the staff on the proposed standards, and I use that phrase advisedly. We received really quite an interesting and apparently

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1 well thought out book, which was more than we were
2 able to go through at such short notice. So, we'll
3 today have an executive summary of what's in the
4 standards and then later on this year we'll have a
5 thorough review at the Commission level of the
6 proposed standards.

7 These plants which enrich uranium by a
8 gaseous diffusion process were previously operated by
9 a contractor for the Department of Energy. The Energy
10 Policy Act of 1992 amended the Atomic Energy Act of
11 1954 to establish a new government corporation, the
12 aforementioned United States Enrichment Corporation,
13 for the purpose of conducting a uranium enrichment
14 enterprise. It provided that NRC is to issue
15 standards to govern the gaseous diffusion uranium
16 enrichment activities within two years after the law
17 was passed, or October of this year.

18 We have before us for consideration SECY-
19 93-285 which contains the proposed notice of
20 rulemaking for new Part 76 called Certification of
21 Gaseous Diffusion Plants and also has options for
22 procedures for the certification process. As I
23 mentioned, we'll go through this today in order for
24 the Commission to give initial response to the people
25 drafting the standards and we'll receive a fuller

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1 discussion in some detail in December, after we've had
2 a time to consider the proposed regulation and the
3 procedural options in depth.

4 Commissioners, do you --

5 Mr. Taylor and Mr. Bernero, the floor is
6 yours. We expect sort of an overview of what the
7 issues are that you've had to go through and the
8 issues that are before the Commission for guidance.
9 Thank you.

10 MR. TAYLOR: Good afternoon. With me at
11 the table are Bob Bernero from NMSS and Billy Morris
12 and Chuck Nilsen from the Office of Research.

13 The proposed rulemaking package that you
14 have is the product of the Office of Research, with
15 assistance from the Program Office NMSS. As you know,
16 Mr. Chairman, it's a rather extensive package. If you
17 drop it, we hope you have hard toe shoes on because
18 it's a rather thick package of information on this
19 subject.

20 We hope today that to the degree that the
21 Commission has been able to look at this, you may give
22 us information which would provide the basis of a
23 second meeting, which we will schedule. I would note
24 that we would like to do that as soon as it's possible
25 with the Commission. So, if the Commission agrees and

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1 with the Commission comments, we can proceed into
2 publishing of the proposed rule in order to meet our
3 deadline next year.

4 With those thoughts, I'll turn to Billy
5 Morris of the Office of Research who will initiate the
6 presentation.

7 MR. MORRIS: Thank you, Mr. Taylor.

8 I'm going to begin by talking about some
9 of the thinking that led to our strategy and approach
10 in developing these certification standards. Chuck
11 Nilsen will then discuss in more detail the technical
12 aspects of the standards and Trip Rothschild will
13 discuss the procedural aspects.

14 (Slide) At the beginning of the year --
15 looking on page 1 of the handout, viewgraph number 1,
16 at the beginning of the year when we began the effort
17 to develop certification standards, there were two
18 factors that were significant in defining the approach
19 or strategy we followed. First, there were no DOE
20 regulations comparable to the NRC regulations that we
21 could turn to and adapt for use of certification
22 standards. DOE requirements, safety requirements,
23 were contained in a number of orders, but these orders
24 also contain commercial requirements and there was no
25 document to provide a coherent overview tying these

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1 orders together and establishing the basic safety
2 objectives of the standards in a way that we felt we
3 could draw upon.

4 So, we turned to the existing NRC
5 regulations to look to find those regulations that
6 would be applicable to facilities such as the gaseous
7 diffusion plants. We had experience in fuel cycle
8 facilities under Part 70. It involved the use of
9 uranium and I knew something about the toxicity and
10 radiological consequences of releases of uranium. We
11 had experience with the criticality issues, materials
12 control and accounting issues before. We had dealt
13 with the licensing of the LES facility also.

14 So, as we turned to the NRC regulations,
15 we also recognized a second factor which was that the
16 gaseous diffusion plants had been designed and
17 constructed many years ago. We felt that we should
18 focus our attention on the operational safety aspects
19 of our regulations that would be applicable to these
20 plants, not to considerations of design and
21 certification. So, that was another factor that
22 weighed heavily in our strategy and approach.

23 COMMISSIONER de PLANQUE: Can you just
24 clarify for me, within the set of DOE orders were
25 there not the appropriate operational safety aspects

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1 in those or was it that there was just this gap
2 around --

3 MR. MORRIS: We're not questioning the
4 appropriateness. It was just that it was very
5 difficult for us to delve through there and extract.
6 There were 80 different orders they finally referenced
7 in the document and I was going to refer to later, and
8 I think that it would have been a tough job for us to
9 go and try to extract that information and pull it
10 together in a way that we could be confident we had
11 understood all the safety context.

12 It turns out, as I'll mention later on,
13 DOE has now done that. They did it later and at the
14 time frame I'm talking about was back when Chuck
15 Nilsen started the process of writing out what the
16 standards should be. DOE has now developed the
17 transition document that will guide their oversight
18 and they pulled all these together in one document.

19 So, I was not questioning the
20 appropriateness or the degree of safety that was being
21 obtained, but just that it was a difficult job for us
22 to undertake.

23 COMMISSIONER de PLANQUE: So this was just
24 a better way to approach the task, is what you're
25 saying?

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1 MR. MORRIS: We felt -- we just didn't
2 know how to go about digging in there and being sure
3 that we were getting the proper context of all those
4 orders separating properly the commercial and the
5 safety parts. So, we felt that we would take a
6 different approach and strategy.

7 Essentially, the strategy we took was to,
8 as I say, try to lay out the applicable NRC
9 regulations that we felt would be appropriate. We
10 were fortunate that we had a number of meetings with
11 DOE during the early part of the year. Chuck Nilsen
12 had occasion to visit the gaseous diffusion plants in
13 Oak Ridge a number of times to his career and had a
14 good understanding of what those facilities were like
15 that enabled him to understand how to make this
16 applicability exercise work.

17 But we felt that we had to go beyond this
18 and so we wanted to review a number of documents to
19 assess the reasonableness of our regulations. We knew
20 having started with the NRC regulations and in
21 developing these standards that there was a question
22 in our minds about whether we would be creating a
23 compliance problem, whether these would be reasonable
24 to implement or not.

25 So, our approach then was to prepare draft

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1 versions of the standards and do reality checks
2 against the various sources of information we had
3 available or anticipated having available. Those
4 documents that we checked against included, as I said,
5 DOE's regulatory transition document which came in in
6 July. By this time we had a draft standard available
7 to test against. And the U.S. Enrichment Corporation
8 also submitted proposed standards about the same time
9 frame and we used that also as a testing ground.

10 (Slide) But we went beyond this, if
11 you'll look to viewgraph number 2, and we requested
12 DOE's views on our basic approach, that is of applying
13 NRC regulations to these plants. We asked for their
14 opinion on alternative approaches to quality assurance
15 and we asked for their opinion on requirements for
16 accident analysis and specifically we asked about
17 certain basic objectives that we would envision using
18 in the evaluation of these plants, a chemical toxicity
19 goal or objective and a dose goal or objective. We
20 laid that out to DOE in a letter that Mr. Bernero
21 signed out, I believe it was June, and DOE replied in
22 July.

23 So, our approach then involved using those
24 documents, the DOE reply, the DOE transition document,
25 the USEC's proposed rules and in comparing what we had

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1 prepared to that. That was the basis for the
2 standards that we developed and sent forward to you in
3 SECY-93-285. Just an example of one DOE comment that
4 we used in assessing and making changes to the
5 document was their concern that these safety
6 objectives, the 10 milligrams and the 25 rem that we
7 were considering at the time were inappropriate
8 because they were essentially siting our design
9 standards that had been developed even after these
10 plants had been designed and constructed, the gaseous
11 diffusion plants and that they wouldn't be
12 appropriate. Because of that concern, which we
13 understand, we have modified the approach taken in the
14 standards that you received and we essentially do not
15 include those numerical objectives or goals in the
16 body of the standards themselves, but have indicated
17 that they would be operational goals for use of
18 assessing the plant vis-à-vis in a range of reasonable
19 postulated accidents that needed to be examined.

20 COMMISSIONER REMICK: What's the origin or
21 basis of 25 rem? That stuck out in my mind too.

22 MR. MORRIS: It indeed has been
23 incorporated in our regulations in the past as a
24 siting criteria, but it was used in the context of
25 postulating the source term. It postulated a non-

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1 mechanistic instantaneous release into the
2 containment. We've made it clear in what we've
3 written in the standards that we do not envision this
4 kind of an approach. What we're talking about is
5 analyzing the operations.

6 COMMISSIONER REMICK: Where? It's not in
7 Part 100.

8 MR. BERNERO: The 25 rem for whole body?

9 COMMISSIONER REMICK: Yes.

10 MR. BERNERO: 25 rem whole body, 300 rem
11 thyroid.

12 COMMISSIONER REMICK: Yes. Yes. I'm
13 sorry, yes.

14 MR. MORRIS: And we envision this to be a
15 TED, a total effective dose equivalent so you don't
16 need the extra component.

17 COMMISSIONER REMICK: I understand. Did
18 you give any thought to whether it should be risk-
19 based rather than just so deterministic?

20 MR. MORRIS: You mean something like a
21 safety goal number?

22 COMMISSIONER REMICK: Yes. Did you think
23 about whether it should be consistent with a
24 Commission safety goal policy?

25 MR. MORRIS: I don't recall that being an

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1 issue that we gave a lot of consideration to, no. We
2 felt that what we wanted to set up was some way to
3 have a measure of effectiveness of the operational
4 limiting conditions. The limiting conditions for
5 operations are the basic safety requirements that the
6 energy corporation would develop similar to technical
7 specifications. These analyses using these goals,
8 these objectives, would be the way that you would go
9 about assessing the safety of the plant against these
10 deterministic, admittedly deterministic criteria.

11 We felt, and I guess if we had given much
12 consideration to the idea of a probabilistic approach
13 or a risk approach, I think it would be difficult in
14 my mind to put numerical -- have confidence in the
15 analysis that you might perform establishing the
16 frequencies of events for these kinds of facilities.
17 You know, we have a number of years of experience with
18 the operation of facilities without any events that
19 would be considered, I think, similar to the large
20 scale accidents that we think of when we analyze
21 reactors. For probabilistic risk assessments there
22 haven't been any events like that. We would have to
23 synthesize these numerical estimates of the facilities
24 from data that would be rather difficult to obtain.

25 COMMISSIONER REMICK: Well, it's difficult

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1 in the reactor area too, but you have the advantage of
2 30 some years experience, right?

3 MR. MORRIS: But we do not have the safety
4 goals in the regulations even now for the reactors.

5 COMMISSIONER REMICK: That's right.

6 MR. BERNERO: Bill, if I could interject
7 for a moment, one of the interesting things here is
8 you have three gaseous diffusion plants generally
9 similar, two still to operate, but all put together
10 you're only in the 10^{-2} range. You've got a little
11 over 100 years of operating experience. So, you have
12 a certain level of confidence that mishaps to date
13 have 1×10^{-2} or something like that revealed frequency.
14 But very serious events just haven't occurred. But
15 you don't have that much operating experience to rule
16 them out. Remember TMI was 432 reactor years in the
17 U.S.

18 This accident criterion or set of criteria
19 really isn't going to be all that significant. It's
20 in the statement of considerations --

21 COMMISSIONER REMICK: Significance from
22 the standpoint of whether they could meet it was not
23 a concern. I was just wondering from the standpoint
24 of coherence.

25 MR. BERNERO: Yes. It's a gauge of

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1 serious off-site consequence, a threshold of off-site
2 consequence. We have the experience and we have the
3 safety analysis that's been done to date where there
4 are some events that can exceed this and there are
5 other mishaps or failures within the plant that can't
6 even remotely approach it. It's just a convenient
7 gauge to say, "This is a serious release. This is a
8 serious event."

9 But for the most part, I expect our
10 operational safety review is going to focus on the
11 already done safety analyses, like this seismic
12 analysis at Paducah. They've gone far, far beyond
13 what you would be doing setting an accident limit as
14 a basis of judgment. You're looking at the seismic
15 enhancement program and so forth.

16 So, I really don't think this is going to
17 be all that crucial a point. It's just a useful index
18 and it's fairly close to the Part 100 25 rem whole
19 body.

20 COMMISSIONER REMICK: Yes. I'm hoping
21 when we move Part 100 dose limits to Part 50 and then
22 eventually look at that, in that case we'll also look
23 at it from the standpoint could those be addressed
24 from a risk perspective rather than --

25 MR. BERNERO: Yes.

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1 COMMISSIONER REMICK: It's something that
2 we did many, many years ago and I don't know if it's
3 possible, but I'm hoping that we will look at these
4 things over time.

5 MR. BERNERO: This wouldn't preclude that
6 because this is not in the standard. It's background.

7 COMMISSIONER REMICK: Is there a PRA for
8 accidents?

9 MR. BERNERO: Not that we know of.

10 COMMISSIONER REMICK: Okay. So you can't
11 associate a risk with -- put the 25 rem in a kind of
12 risk-based -- yes.

13 CHAIRMAN SELIN: Mr. Morris, you're to be
14 congratulated on cutting to the quick more rapidly
15 than almost any briefing that we have had. Would you
16 continue, please?

17 MR. MORRIS: Well, that was just to
18 indicate the way that we have been thinking in terms
19 of using the DOE information and bringing forward what
20 we have.

21 Before turning over to Chuck Nilsen, I
22 just want to mention a couple of points. Based on our
23 review of these documents, we believe that the
24 standards will provide a sound basis for regulation,
25 safe regulation, and we don't know of any problem that

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1 the U.S. Enrichment Corporation would have with
2 meeting these standards at this time. However, we do
3 stand ready to respond to the public comment process,
4 to any comments and recommendations that would suggest
5 ways that we could improve the standards.

6 We specifically included in the draft
7 Federal Register notice invitations for comments on
8 whether some or all of the requirements proposed by
9 the U.S. Enrichment Corporation or among DOE's
10 oversight requirements might be applicable and
11 preferable in lieu of the standards that we've
12 proposed.

13 With that, I would turn to Chuck to go
14 into the details --

15 CHAIRMAN SELIN: Well, I should just
16 observe that this approach sounds very reasonable.
17 It's not the one we had in mind when we were talking
18 originally. We had hoped that somehow a coherent
19 picture could be made out of the existing orders, et
20 cetera, so that we could merely be in the position of
21 responding to the existent corpus of regulations
22 saying, "It seems reasonable. It doesn't seem
23 reasonable." And the orders are even worse than you
24 portray them because they're not specific to the
25 Enrichment Corporation. These orders generally cover

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1 all DOE facilities and the relevance to any particular
2 facility is pretty remote.

3 So, you made a statement or a claim, let
4 me put it that way, that even though we have a much
5 cleaner approach here than was originally foreseen
6 writing a new set of standards instead of just
7 abstracting an existing set, I believe I heard you say
8 that the corporation should not have a lot of trouble
9 meeting these standards from a procedural point of
10 view. In other words --

11 MR. MORRIS: We don't know of anything
12 that would preclude --

13 CHAIRMAN SELIN: By that I understand that
14 if they have trouble meeting them there will be a
15 health and safety reason for meeting them, not just
16 the fact that we've taken a different form for our
17 standards from the orders, et cetera, under which
18 they're operating.

19 MR. MORRIS: Yes.

20 CHAIRMAN SELIN: Okay.

21 COMMISSIONER REMICK: What type of doses
22 did DOE use in their accident analyses in the past?

23 MR. MORRIS: We could not find specific
24 criteria or goals such as the ones we're proposing,
25 but they do have analyses showing a range of responses

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1 to various accidents.

2 COMMISSIONER REMICK: I see.

3 MR. MORRIS: Those include some very
4 conservative assumptions in the accident analysis too.

5 COMMISSIONER REMICK: But they didn't
6 compare it with a particular threshold or anything?

7 MR. MORRIS: I don't recall having seen
8 that.

9 Chuck?

10 MR. NILSEN: (Slide) If you go to slide
11 number 3, it sets out what we currently have put into
12 our standards. We have included the procedural
13 requirements, generally applicable NRC health and
14 safety safeguard requirements and then we've included
15 some specific requirements.

16 (Slide) Slide number 4 is just a quick
17 overview of the procedural aspects, initial
18 certification denial and annual certification. Trip
19 will go over this later in detail on slides 11 through
20 22. I just wanted to bring it out here that these are
21 the aspects of the certification procedure.

22 (Slide) Slide number 5.

23 As indicated, we did start with Part 70
24 and there are many parts of 70 that are general enough
25 that we just went in and made the modifications that

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1 were required to get into this certification process,
2 the purpose, scope, definitions to follow what
3 procedures we really know.

4 Bullet number 2, emergency planning, we
5 used the emergency planning of Part 70, which is the
6 four major fuel cycle facilities. We modified it a
7 little bit to include what the gaseous diffusion
8 plants currently do. They do go beyond what we
9 currently do in Part 70 for fuel cycle facilities and
10 we didn't feel it was appropriate just because we were
11 going to take over responsibility to back off on what
12 they were currently doing with respect to emergency
13 preparedness.

14 COMMISSIONER REMICK: So they should not
15 need to change their emergency preparedness to meet
16 what's proposed?

17 MR. NILSEN: That's right. We are not
18 backing off -- we have gone beyond Part 70 and
19 incorporating what they have currently done in their
20 practices at their facility.

21 CHAIRMAN SELIN: Before you turn the page,
22 don't read anything into this question in terms of a
23 predisposition, but looking at the health and safety
24 risks at these facilities compared to, say, the large
25 fuel facilities, do they justify having resident

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1 inspectors there?

2 MR. BERNERO: Yes, I think they do, but
3 our minds are still open as to how many. You may
4 recall in the initial discussions, especially when we
5 were considering the prospect of taking over July 1st,
6 '93, we even had numbers as high as four or five
7 resident inspectors per site. But the mind's open.
8 We're looking at this and the internal operational
9 safety as against off-site risk does seem to warrant
10 it.

11 MR. NILSEN: That takes care of the third
12 bullet on page 5.

13 (Slide) Going to slide number 6, again we
14 get into the requirements in the application. First
15 of all, the safety analysis report, get into the
16 assessment of accidents. Here we're looking at the
17 assessment of accidents which are reasonable
18 postulated accidents. We don't want to get into the
19 area of accidents that a normal person wouldn't
20 consider. So, in this area we're looking at the --
21 and as defined we say a reasonable spectrum of
22 postulated accidents for these facilities. DOE has --
23 well, the plants have been evaluated on this basis and
24 we're just looking for that as part of the basis for
25 the staff to go in and use these numerical objectives

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1 that we have included in the statement of
2 considerations on the regulation themselves for
3 assessing the level of protection for public health
4 and safety.

5 COMMISSIONER REMICK: What are you talking
6 about, tornadoes?

7 MR. NILSEN: We include natural
8 phenomenon.

9 COMMISSIONER REMICK: And they have
10 analyzed them and --

11 MR. NILSEN: They have analyzed them. We
12 have not specified the natural phenomena frequencies
13 or anything else. We have said we want an analysis of
14 the effects of natural phenomena, what they have
15 analyzed their facilities for. We're looking mainly
16 at where they are now. We're not putting any
17 additional criteria on, "Tell us where you're at and
18 what you've designed your facilities for."

19 (Slide) Number 7.

20 We go into the quality assurance area. In
21 our question earlier we asked about quality assurance
22 and if we wanted to be specific with respect to
23 exactly telling them what we wanted or be more general
24 under the aspects of Part 50, Appendix B. We chose to
25 reference Appendix B to Part 50, specifying that they

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1 should be applied in a graded manner specific with the
2 significance of health and safety, recognizing we're
3 not going back to design or anything like this, we're
4 stopping with the aspect of where they operationally
5 are now. We're not going back and look at the design
6 of the facility and our people, in looking at the QA,
7 will look at it on the basis of how it meets the
8 objectives of Part 50.

9 COMMISSIONER REMICK: So, operational QA
10 future modifications --

11 MR. NILSEN: Right.

12 COMMISSIONER REMICK: -- apply Part 50 or
13 all the reg. guides and NUREGs and things that are the
14 thing that people have trouble with that are the paper
15 trail, an excessive paper trail.

16 MR. MORRIS: Maybe I could mention what --
17 we have learned that there are documents that DOE, in
18 their letter, came back and recommended. For
19 instance, I believe a quality assurance document that
20 they follow. When you look at the oversight document,
21 they have a set of orders related to quality assurance
22 there.

23 I think my model had been, and Bob might
24 want to reflect on this too, is that what will happen
25 will be using these overarching performance objectives

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1 of 10 CFR 50, Appendix B. They would develop their
2 own, however they felt they should develop, a program.
3 So, what we really say is develop a program, tell us
4 what your program is that meets these general
5 objectives. So they could use in the reference in QA
6 1 and QA 2 any number of documents. In fact, I
7 believe in QA 1 is mentioned in the oversight
8 document.

9 MR. NILSEN: I would see no problem with
10 them coming in with that kind of a proposal or
11 submittal.

12 MR. BERNERO: Yes. They have suggested to
13 go with the DOE order system QA program which at first
14 blush appears to us to be, if anything, more
15 restrictive. We're looking at that and we think that
16 would serve the purpose. What we don't want to do is
17 lock in some unnecessary restriction here, you know,
18 that might come from that general order.

19 MR. MORRIS: The second bullet. The
20 standards that we've written cover all enrichments,
21 recognizing that the Portsmouth facility at one time
22 did produce high enriched uranium and parts of that
23 facility are still contaminated with high-enriched
24 uranium. So, we have incorporated all of the current
25 requirements, but again they are to be applied

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1 commensurate with the operations. Obviously, the
2 Paducah plant has never produced anything greater than
3 two percent. So, they wouldn't have to worry about
4 their restrictions of higher enriched materials. And
5 in doing this we have used our own regulation,
6 existing regulations.

7 Bullet number three. We have included in
8 the standards an aspect of requesting funding
9 considerations for the final deposition of the
10 depleted uranium. In a statement of considerations we
11 have included the comment that we are asking
12 specifically for public comment in this area, not
13 recognizing fully in our conversations with OGC where
14 the NRC comes down in our responsibility for the
15 depleted uranium. That point is specifically made in
16 the statement of considerations.

17 COMMISSIONER de PLANQUE: I'm sorry. What
18 was your conclusion on that, on the responsibility?

19 MR. BERNERO: I wonder if I could speak to
20 it. The issue is principally the depleted uranium
21 tails and let us set aside whether or not to call them
22 waste because that's a separate argument. But
23 certainly they're a residue of operation.

24 The act that sets up this lease
25 arrangement and everything gives clearly the

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1 assignment of decommissioning responsibility to DOE
2 and from the very beginning we have been looking at
3 USEC as a licensee or potential similarity to a
4 licensee and said that they should have assurance to
5 deal with these residues of operation. The rule as
6 structured says set aside a certain amount of funds
7 and you have the responsibility, USEC have the
8 responsibility to pay for the disposition of those
9 residues generated while you had the keys. Presumably
10 those funds would go to DOE later.

11 However, by the statement of
12 considerations, if you read the passage that discusses
13 it, certainly it could be deemed part of
14 decommissioning. There is a bridging lease agreement
15 whereby DOE says, "Here's how much you have to pay us
16 and here's what we do and this is what we provide and
17 this is what you provide." Certainly USEC and DOE can
18 reach some agreement to deal with the matter
19 separately from what a pure licensee would have to do.
20 So, the story is open.

21 CHAIRMAN SELIN: Let me try this a little
22 bit differently. Okay? We have a situation where the
23 government is clearly responsible for decommissioning
24 this site. However, what has to be contributed by the
25 cert. fee, or whatever we want to call it, USEC, is as

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1 much going to be set by contract between them and the
2 government as anything else. So, we don't really know
3 what we require. What we require is that there be
4 some provision, some enforcement provision for
5 decommissioning the site when it's all done and
6 whether that form is an escrow amount that USEC will
7 have to contribute to DOE or not depends on things
8 that we may not know yet, namely the contractual
9 relationship between DOE and USEC. But what we don't
10 want to do is be in a situation 20 years from now, 30
11 years from now, 10 years from now where DOE says,
12 "We're only responsible for the status quo ante. It's
13 up to USEC," and nobody has forced USEC to put aside
14 the funds to cover these arrangements.

15 So, any of a number of arrangements will
16 satisfy us, but the combination of DOE and USEC has to
17 come forward and say, "Here is an arrangement that's
18 satisfactory to both of us which will cover
19 decommissioning." Now, is that right?

20 MR. BERNERO: Yes, that's exactly what we
21 did.

22 CHAIRMAN SELIN: Trip is squirming around
23 here. So, let me see what he has to say.

24 MR. BERNERO: The rule is structured the
25 same way we operate with a proposed licensee. In

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1 other words, that funding assurance for disposition of
2 the residues is one acceptable way to do it. If DOE
3 and USEC come out in joint comment, so to speak, on
4 the proposed rule to say, "No, here is a contractual
5 arrangement to provide the assurance of disposition,"
6 so that everyone knows that there is not going to be
7 orphan material at the end of the lease, that's the
8 whole purpose. We want to avoid orphan material that
9 was unplanned for.

10 So, this material generated during the
11 period of the lease either has to have some sort of
12 reasonable assured funding set aside for it or some
13 contractual arrangement whereby the government will
14 accept that responsibility.

15 CHAIRMAN SELIN: Mr. Rothschild?

16 MR. ROTHSCILD: I'm going to talk a
17 little bit about the statutory scheme a little bit.
18 The statutory scheme sets aside a fund under the act
19 to pay for the decommissioning, where the corporation
20 puts some money and Congress throws some money and the
21 utilities throw some money into a fund. When this
22 legislation was being negotiated we had several
23 meetings with the Executive Branch as well as the Hill
24 talk about this and say, "Well, there's really not an
25 explicit provision in the legislation that says NRC's

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1 decommissioning regs are to apply or that what are we
2 supposed to do if we don't like the funding amounts of
3 the scheme and think we want to impose additional
4 requirements on them."

5 I think we've tried to get Congress to
6 deal with the issue, to either recognize we had some
7 role in there or to say, "This is the exclusive scheme
8 and NRC keep your hands out of the area." Congress
9 didn't either. They remained silent and really didn't
10 address an NRC role. I think by failing to provide
11 for NRC regulations applying and setting up this
12 decommissioning fund there doesn't seem to be any
13 contemplation that NRC could go beyond this. It
14 almost leaves an implication with you when you read
15 the thing that decommissioning is really not NRC's
16 concern at all, that that's going to become DOE's
17 problem and the corporation's problems when the
18 facilities are no longer operating.

19 I think the staff has done a good job in
20 this Federal Register notice of saying, "We're not
21 quite sure whether under those circumstances we should
22 be setting decommissioning requirements and requiring
23 those kinds of assurances." That may really be a
24 matter between DOE and the corporation and maybe
25 that's what Congress contemplated. I think what we've

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1 left is a proposed rule that gives us flexibility,
2 that we can go look at comments on the issue and then
3 when we make a final rule decision, at that point we
4 can make a decision exactly what we want our
5 jurisdiction to be in that particular area. But I
6 think it's best right now to leave the issue open and
7 let's see where the public comments come in on the
8 question.

9 CHAIRMAN SELIN: Okay.

10 MR. NILSEN: I thank my colleagues for
11 bailing me out.

12 (Slide) If you look at slide number 8, we
13 have identified several regulations as being
14 applicable, Part 19, 20, 21. Twenty-six says it
15 applies to any materials where they may have the types
16 of materials that are covered with respect to the
17 fitness-for-duty programs.

18 COMMISSIONER REMICK: What impact, if any,
19 is Part 26 on them? I assume they have some kind of
20 fitness-for-duty program now. Is it consistent with
21 26 or not?

22 MR. NILSEN: They have some fitness-for-
23 duty program. Twenty-six would only kick in if they
24 had the -- what do you call it, the proper amount.

25 MR. BERNERO: Yes. Yes. Actually, the

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1 act forbids the corporation from making high enriched
2 uranium. It's solely for the purpose of low enriched
3 uranium production. One can speculate about the
4 possibilities. Not only the HEU that's in the
5 process, but for instance the much discussed Russian
6 HEU could be brought back and blended in some way.

7 There's a great effort on the part of the
8 corporation to avoid being a category 1 facility with
9 all the bells and whistles that go with it. This
10 applicability of Part 26 fitness-for-duty is
11 conditional. It's only if they get into the category
12 1 standing. So, they're not required for LEU.

13 MR. NILSEN: (Slide) Slide number 9
14 identifies the additional standards which are used.
15 A lot of these are mainly associated with the physical
16 protection, material control and accountability. We
17 didn't want to go in and repeat everything, so a lot
18 of these are referenced in our standards.

19 COMMISSIONER REMICK: What's the impact of
20 Part 73 on their current security plans?

21 MR. MORRIS: I believe it was mentioned in
22 the letter that we sent to DOE. From what I recall,
23 they came back and said they didn't know of any reason
24 that that would be a hardship. I'd have to check to
25 make sure that was referenced in the letter, that they

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1 did mention it.

2 MR. NILSEN: As a matter of fact, the USEC
3 draft document actually spells out that they will meet
4 Part 73.

5 COMMISSIONER REMICK: Okay. The reason I
6 ask is it's, in my mind, quite prescriptive and I
7 didn't know if it would be inconsistent. I assume
8 they have an adequate security plan. But you're
9 saying it's apparently no big deal.

10 MR. BERNERO: I think you're aware of the
11 correspondence we've had with DOE about the CRD data,
12 protection of the data, protection of the material and
13 the division of responsibility with DOE. That is
14 affected here too. We have reached an agreement, a
15 tentative agreement on that.

16 COMMISSIONER REMICK: Yes. I think you
17 introduced another question I had. Apparently they're
18 going to continue to issue security clearances?

19 MR. NILSEN: Yes.

20 COMMISSIONER REMICK: And I recently heard
21 from a DOE person that they spend no more than three
22 FTE on that effort. Why is the reason that we can't
23 absorb that activity? It's not clear to me.

24 MR. TAYLOR: We looked at that very
25 carefully. In fact, we estimated the FTE is higher.

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1 I didn't hear that three FTE. There's some ongoing
2 litigation because of denied clearances which would
3 require OGC help. We looked at that package and this
4 was a matter of discussion between us and the
5 department and they agreed. We were not planning on
6 taking that responsibility.

7 COMMISSIONER REMICK: No, I understand.
8 But what I recently heard --

9 MR. TAYLOR: And the resolution was they
10 agreed to keep it.

11 CHAIRMAN SELIN: They don't know how many
12 they have because they have a set of people who do
13 that among other tasks.

14 MR. TAYLOR: It is melded in with their
15 other programs.

16 CHAIRMAN SELIN: So, they have to make an
17 estimate among their contract operations.

18 COMMISSIONER REMICK: This came from the
19 Acting Assistant Secretary. Acting Director, excuse
20 me.

21 MR. ROTHSCHILD: The Division of Security
22 sent out a -- we'll call it a questionnaire to DOE as
23 part of this process and they gave us a very detailed
24 statement of how many hours on all the various aspects
25 of the security thing and how many people they did,

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1 and we'll be glad to provide that to you.

2 COMMISSIONER REMICK: Okay. Yes, I'd
3 appreciate that.

4 MR. BERNERO: Yes. Commissioner Remick,
5 on page 4 of the Commission paper on the subject of
6 resources, we addressed this division of
7 responsibility and the parts that we were absorbing
8 and would cover by reprogramming. It's a few FTE.
9 But it's not that part. It's not that part.

10 MR. NILSEN: (Slide) Slide number 10.

11 The first bullet speaks to the fact that
12 we have included an amendment to Part 51 with respect
13 to a categorical exclusion for the certification of
14 these facilities.

15 Bullet number 2, we have included a 50.59
16 type change which is a change that the facility --
17 that they will be able to make without prior
18 Commission authorization based on the criteria that
19 we've established, no new unreviewed safety items or
20 unreviewed safety items, no increase in health and
21 safety, no increase in the impact on the health and
22 safety of the public.

23 Number 3 bullet, DOE and USEC both asked
24 for a backfit consideration. We have not included the
25 backfit consideration. We don't have backfit

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1 considerations in our fuel cycle and we believe that
2 at this time it's premature to try to indicate or put
3 down what a backfit consideration would be. In any
4 amendments or actions that we take, we always are
5 required to provide the -- do an analysis, cost impact
6 anyway. So, we feel at this time backfit analysis is
7 not -- a backfit rulemaking is not required.

8 COMMISSIONER REMICK: I thought we were
9 giving some consideration to a backfit rule for fuel,
10 major material licensees. I thought that was one of
11 the strong recommendations from the -- not regulatory
12 review group. What do I want to say? The --

13 CHAIRMAN SELIN: Impact group.

14 COMMISSIONER REMICK: Yes.

15 COMMISSIONER de PLANQUE: Impact study.

16 COMMISSIONER REMICK: Yes, the impact
17 survey.

18 MR. BERNERO: Regulatory impact survey.
19 Well, that's still under consideration. But to focus
20 on the enrichment plants, our whole approach is
21 something of a backfit rule. We're saying that
22 presumably the operational safety of these facilities
23 yesterday and today is going to be held to more or
24 less the same standard when we take over regulatory
25 jurisdiction. But there isn't even a logical basis

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1 for a backfit rule here. What would you define the
2 status quo ante? The regulatory process is this
3 melange of orders and contracts and we just don't have
4 the regulatory history or experience to be able to
5 say, "Okay, this is the level of adequate protection
6 and previous rulings and previous acceptances, and
7 then anything beyond this has to be justified." We
8 just don't have that.

9 COMMISSIONER REMICK: I think if I was in
10 their situation I'd want to be sure that the staff
11 wouldn't come along with all kinds of ideas of things,
12 improvements that should be made and there'd be some
13 kind of a criteria for doing that like 50.109 provides
14 in the reactor area. It seems like, to me, a logical
15 -- I don't follow your argument. It's not possible to
16 have something like that. We just don't have the
17 history.

18 MR. BERNERO: A regulatory analysis for a
19 rulemaking, properly done, goes a long way to do the
20 same thing.

21 COMMISSIONER REMICK: No, I'm talking
22 about the future. Five years down the road the staff
23 comes up with an idea, "We think you should make this
24 modification to the facility. We think it's a good
25 idea," and there's no provision for determining

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1 whether it's needed for adequate protection, whether
2 it's a cost beneficial backfit or what. I guess I
3 don't quite see the --

4 MR. TAYLOR: We don't have a license to
5 amend as we may in a current existing facility. We
6 don't actually issue a license.

7 COMMISSIONER REMICK: Ah, that's a good
8 point.

9 MR. TAYLOR: There's a big difference.

10 COMMISSIONER ROGERS: I don't see a
11 parallel. I get your point. It seems to me that
12 there's no basis on which -- there's no baseline on
13 which to do the backfit analysis.

14 MR. BERNERO: But I think the Commissioner
15 is suggesting that perhaps after we certify the first
16 time, the second time and the third time there could
17 be some historic basis then. My focus is on the
18 first acceptances.

19 COMMISSIONER REMICK: No, I wasn't
20 thinking for the rulemaking, no. But I agree. I
21 guess there is not a license.

22 MR. TAYLOR: If we -- you know, it's
23 speculative to say that we would find something like
24 this that would cause us to hold up certification. It
25 would certainly be a very big issue and public matter

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1 if it were something like that which would be in front
2 of the Commission and all of us at that time. So, I'm
3 sure we'd analyze it. But there is not a license to
4 amend, which is what we traditionally have done in the
5 current fuel facilities.

6 COMMISSIONER REMICK: Any legal comment on
7 appropriateness of a backfit provision?

8 MR. ROTHSCCHILD: I think that's a policy
9 decision for the Commission. Obviously there's a lot
10 of merit in the staff argument because we have so
11 little experience with these facilities. It's very
12 hard at this point even the first or second year to
13 say we really want to make it more difficult for us to
14 change things. I think you want to have enough
15 experience where you can feel confident before you
16 even impose such a requirement. That's really a
17 policy call for the Commission.

18 COMMISSIONER REMICK: Didn't we have a
19 backfit rule for reactors long before we had much
20 experience? I'm not thinking about the provisions,
21 the improvements in 50.109 in the '80s, but 50.109
22 goes back pretty far.

23 MR. ROTHSCCHILD: I can't answer that
24 question for you.

25 COMMISSIONER REMICK: Okay.

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1 MR. NILSEN: We'll turn it over to Trip
2 now. He'll go through 11 through 22 on --

3 COMMISSIONER REMICK: I hope that that
4 will be addressed in the public comments.

5 CHAIRMAN SELIN: Let's not get off this
6 quite so fast. I just want to make sure I understand
7 the arguments.

8 Mr. Bernero is saying that if you're
9 comparing the first application of our proposed rule
10 to the status quo ante, the concept of a backfit is
11 too badly defined. So, what we're saying is you're
12 asking the Commission to look at a set of standards
13 and say, "This is our regulation for the first time we
14 tried to certify." Although you've done a lot of
15 analyses to indicate that they shouldn't really have
16 trouble meeting these regulations, you're not prepared
17 to make a strict statement that says we haven't in
18 some place made more rigorous regulation than what
19 they've had before. It's too hard even to figure out
20 what that is, let alone have to justify it with the
21 strict cost benefit analysis.

22 That's what you're saying, isn't it, Mr.
23 Bernero?

24 MR. BERNERO: Yes.

25 CHAIRMAN SELIN: Okay. Then the question

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1 comes, well, what about the second, third or fourth
2 application? I believe it's Commissioner Remick's
3 major point that the second time we apply, the third
4 time, what's to keep us from just sort of tightening
5 the screws five percent each time we apply the rules.
6 Is it not reasonable to say, once we get these rules
7 down, there might be even a transition period that
8 goes beyond one certification? So, to the point where
9 the regulatory history is under NRC, not under DOE,
10 that there be a threshold that has to be passed before
11 a change in rules, implementation, et cetera, be made.

12 I don't think you've addressed that
13 question, have you?

14 MR. BERNERO: Well, I did it only
15 partially. Let me put it this way. In the present
16 stage where we're formulating our standards, our
17 rules, and we're looking at what they have done and
18 what they have and what their requirements are, we're
19 in a period of safety discovery. We're discovering
20 what did you require and how did you comply with it?
21 What is there? That period of safety discovery will
22 actually continue after we take regulatory
23 jurisdiction. I don't think we're going to be
24 brilliant on the first day and know everything there
25 is to know about these plants.

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1 CHAIRMAN SELIN: The first day is October
2 1st, 1994, October 1st, 1995.

3 MR. BERNERO: Yes. And I think in the
4 second certification or the third there may indeed be
5 a potential to discover -- come to think of it, the
6 seismic restraints on the pipes at Paducah are really
7 not operationally safe, even for a --

8 COMMISSIONER REMICK: I'd say it's a
9 question of adequate protection in that case.

10 MR. BERNERO: Yes. Yes.

11 COMMISSIONER de PLANQUE: Yes. Then it
12 would pass.

13 COMMISSIONER REMICK: That it would pass.

14 COMMISSIONER de PLANQUE: It would pass
15 with a backfit.

16 CHAIRMAN SELIN: The problem I have with
17 this discussion, and even though I prolonged it I
18 don't want to prolong it much further, is the question
19 is backfit with respect to what? The backfit with
20 respect to the current situation, the DOE situation,
21 that's sort of irrelevant. We're going to pass a set
22 of rules and it's a perfectly reasonable question for
23 the Commission to ask, "How does this compare with
24 today's situation?" It's perfectly reasonable for the
25 staff to say, "We're not exactly sure. We think it's

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1 comfortable." We've done some analyses and we will
2 look at these rules, I assume, on their own merits and
3 say they're reasonable or they're not reasonable.

4 The second possible answer is between,
5 say, the first and the third certification when we're
6 still finding out what's really there, where one might
7 argue that the first one is the baseline or one might
8 argue it takes a couple of cycles to get through.
9 Then the third possibility is thereafter. I certainly
10 think saying a backfit rule for thereafter is not
11 called for might be cavalier. A backfit rule compared
12 to the 1993 operations, in my opinion, is able ill
13 defined because we don't know exactly what they're
14 doing. We don't intend to make things much tougher
15 unless we have a good reason, but we might do so. So,
16 in the discussions, in my opinion, it would be very
17 good in the actual published rule to concentrate on --
18 to not just use the phrase "backfit rule," but backfit
19 compared to what. That's a point that I think is
20 worthy in the future, not now.

21 MR. BERNERO: Yes. I would just add that
22 using the example I cited of seismic restraints, the
23 safety analysis done by the Department of Energy is
24 itself a backfit consideration.

25 CHAIRMAN SELIN: Nobody is arguing that in

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1 the absence of a backfit rule the staff is going to
2 run roughshod over DOE.

3 MR. BERNERO: But the rule as presently
4 drawn for many significant things, like seismic
5 analysis, is basically saying do a hazard analysis or
6 a seismic risk analysis and I'll tell you if it looks
7 good enough. You know, to change it, I don't change
8 the rule, I change the acceptability of the analysis.
9 To evoke adequate protection --

10 CHAIRMAN SELIN: That's the first time you
11 certify, right? I mean you're talking about do this
12 analysis for the first certification.

13 MR. BERNERO: Well, yes, the analysis
14 exists. In fact, it's spelled out in the appendix
15 here.

16 CHAIRMAN SELIN: I think Commissioner
17 Remick's concern, I know my concern would be that you
18 would go through the analysis a second time in 1996
19 and say, "Well, that was good enough for 1995, but on
20 reflection maybe we should tighten it up and
21 require tougher standards."

22 MR. BERNERO: That's exactly my concern
23 too. It may be justified.

24 COMMISSIONER REMICK: If I look at it from
25 their standpoint, we really have them in a tight spot,

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1 every year certify.

2 MR. BERNERO: Exactly.

3 COMMISSIONER REMICK: And we could put a
4 lot of leverage --

5 MR. BERNERO: It's a serious
6 responsibility.

7 COMMISSIONER REMICK: And I can't worry.
8 I can understand how they would be concerned about
9 some kind of a criteria for determination of backfit
10 in the future. I'm not talking about now.

11 COMMISSIONER ROGERS: Well, if I could
12 just say something on this. The letter, the answer to
13 you on the July 19th letter, if I read it correctly,
14 on page 5 says, "In our judgment, the certification
15 process for the GPD should more nearly resemble a
16 backfitting process for an existing facility rather
17 than the licensing process for a facility not yet
18 completely designed or constructed. That's the very
19 first certification, as far as I can read into that.
20 I can't buy that point of view at all. I feel there
21 isn't any basis yet established.

22 Now, your concern, Commissioner Remick, of
23 once the thing's been certified a couple of times,
24 ratcheting up, there I would be concerned about that
25 too. But this view that DOE expressed in their July

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1 19th letter simply says the entire initial
2 certification process should be regarded as a backfit.
3 That, I can't buy.

4 MR. BERNERO: Can't be complete.

5 COMMISSIONER ROGERS: No.

6 MR. ROTHSCHILD: Let me take over from
7 here. As you know, lawyers love to talk about
8 procedure. So, I'd like to indulge you perhaps in a
9 little more detail than what staff has done on the
10 technical requirements so that you understand how this
11 process would work.

12 There are really two fundamental questions
13 that the Commission needs to think about. One is what
14 form and when do you want public participation in the
15 certification process. The second question is when do
16 you want the Commission itself to get involved in the
17 certification decisions and process.

18 We're lucky in a certain extent with the
19 statute. I think it's the only statute we have that
20 basically gives us unfettered discretion procedurally.
21 That gives the Commission lots of opportunity to use
22 their sound judgment and come up with a good solid
23 process without a lot of constraints. The one dark
24 cloud that we have hanging over us though is this
25 requirement that we certify annually. We've got to

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1 develop a process so we end up with a speedy decision.
2 We've got to allow time both for the corporation to be
3 able to file an application with the Commission and
4 we've got to allow some time for the staff to do a
5 meaningful review of the application and to get an
6 agency decision by the Commission itself.

7 (Slide) The next slide really deals --

8 CHAIRMAN SELIN: Before you get off that,
9 when I read this document I really did an honest job
10 of trying to read it rather thoroughly beforehand. I
11 was curious as to what filled up 400 pages and, in
12 fact, there's a lot of material there.

13 Is there anything in your opinion in the
14 statute or in good practice that requires us to do a
15 positive certification each year as opposed to just
16 say, what's new since we certified last year, look at
17 the changes, say they do or don't add up to anything
18 significant and then maybe once in five years do a
19 true bottom-up recertification? Would that be
20 inconsistent with the statute?

21 MR. ROTHSCHILD: I think that basically
22 could be done. I think you're going to have to make
23 an initial positive finding. And then I think in the
24 initial reviews you're going to technically in a paper
25 you're going to have to make a positive finding, but

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1 you can certainly direct the staff to look at the
2 changes, tell the applicant not to submit a whole new
3 application every year, but just update what portions
4 need to be updated and focus on the changes and if the
5 Commission is satisfied that the changes are
6 consistent with public health and safety in the
7 regulations, go ahead and issue the certificate for
8 the year.

9 CHAIRMAN SELIN: What about the next part?
10 Could we on our own say this process requires a review
11 of updates say every four years, but every fifth year
12 we would want to look not just at the --

13 MR. ROTHSCCHILD: Do a more thorough and go
14 back to the baseline? I think you've got discretion
15 to do that, if you wanted to do that kind of process,
16 as long as every year you submitted a report to
17 Congress saying that you were satisfied it was
18 satisfying regulatory requirements. That's basically
19 your minimum requirement. How you get there, you've
20 got a lot of discretion.

21 The statutory requirements are really
22 quite bare, but I thought I'd like to point out a
23 couple of nuances as we go through.

24 One, we've got to establish certification
25 regulations.

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1 The second one, the corporation must apply
2 annually with the Commission and we must consult with
3 EPA as part of the process. I'll discuss later what
4 the nature of that EPA consultation will be. We also
5 must provide Congress with an annual report.

6 Now, the annual report is interesting
7 because we've got to give them a status report on the
8 facilities. It's got to include the determination,
9 whether they're in compliance with applicable
10 standards or if they're not whether we've approved a
11 compliance plan. It's also got some interesting loose
12 words that say we've also got to advise them whether
13 they -- the report needs to contain, is a better way
14 of putting it, the discussion of whether they're in
15 compliance with all applicable laws. Well, as you
16 know, under the statute NRC does not have plenary
17 authority over the facilities. EPA will have
18 authority for the Clean Air Act, for RCRA, for Clean
19 Water Act, and I presume what this provision means is
20 that part of our report, when we get EPA comments,
21 that EPA will somehow tell us as part of their
22 submission whether they're in compliance with Clean
23 Water Act and other laws, and then we'll attach that
24 to the back of our report.

25 CHAIRMAN SELIN: So, if EPA is late, we're

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1 not in compliance with the law?

2 MR. ROTHSCHILD: Well, I think we will do
3 -- EPA, as part of this process, is apparently willing
4 to give us views in the same time as public comments
5 and we'll get to that in a minute. We should have EPA
6 views in plenty of time. I think we're going to do
7 the best we can. Maybe we can -- if we get in that
8 box we'll tell Congress we've done what we can and
9 they should -- further submissions will come in from
10 EPA. We're going to obviously, as this process goes
11 along and we get closer to actual certification, we're
12 going to need to work out and fine tune some of these
13 details with EPA. But that statutory language there
14 on the nature of the report is a little bit broader
15 than our regulatory jurisdiction and I just wanted you
16 to be aware of that nuance.

17 One of the other little interesting
18 nuances is what does an annual report mean. Does that
19 mean every 12 months or does that mean once a year?
20 The way we would like to interpret the statute is
21 really once a calendar year, which basically means
22 let's say we finish a certification process one year
23 on October 30th. The next year we wouldn't view that
24 as an October 30th deadline for our next report to
25 Congress, we'd view that as a December 31st deadline.

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1 Obviously the later in the year we make the decision
2 the less time it gives us the next year to make a
3 decision. So, we need to be careful there. But I
4 think we're going to try to use the flexibility that
5 seems to be inherent in the law to give us the maximum
6 amount of time that we need in order to make a
7 meaningful certification decision.

8 COMMISSIONER REMICK: Can we specify the
9 third quarter or the fourth quarter of each calendar
10 year or something like that?

11 MR. ROTHSCHILD: Yes. We're going to go
12 through when we get to the regs. and the schedule in
13 here and we'll try to get at some detail as far as a
14 projected schedule.

15 The corporation obviously cannot operate
16 the facilities without an affirmative NRC findings.
17 That means either we've got to issue a certificate or
18 we've got to approve a compliance plan. The other
19 important requirements are certificates in lieu of a
20 license.

21 We've had bare minimum of a statutory
22 framework, for which we're thankful. We now sat down
23 with -- OGC sat down with the staff to develop the
24 procedures and the procedures that you see were
25 largely developed by Grace Kim and Roger Davis in the

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1 Office of the General Counsel did most of the
2 thinking.

3 One of the first questions we came up with
4 was do we want the two applications to come in at the
5 same time for both facilities or do we want them
6 staggered? Which is better from a staff review
7 perspective? And the NRC staff came back to OGC and
8 said, "We think they're better both to come in at the
9 same time because a lot of the issues will be common
10 to the two facilities and it's probably better for the
11 staff to grapple with the two together at the same
12 time."

13 My understanding is the staff has
14 informally discussed that with the corporation and
15 that approach is acceptable to the corporation as
16 well.

17 Working backwards, really when you look at
18 the back end and you start moving the process forward,
19 you realize if there's any hope of completing the
20 process a year you've got to have the application in
21 by April 15th and that is really pushing things.
22 That's calling for a late December Commission decision
23 if you have an April 15th starting date.

24 As the staff has noted, the requirement is
25 that the initial regs be published by October for the

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1 first application rather than --

2 CHAIRMAN SELIN: Excuse me. Are you
3 assuming that the Commission itself has to vote on
4 this when you're saying you've got to have it by April
5 15th?

6 MR. ROTHSCCHILD: We've got a process along
7 those lines and that's something we'll talk about in
8 a minute. We're talking about a Commissioners' review
9 process, not necessarily a vote, but we've got a
10 process where the staff would make the initial
11 decision and people could appeal that to the
12 Commission and the final effective decision would be
13 the one by the Commission itself. But I'll walk you
14 through that in a minute if you can bear with me a
15 second.

16 The first rules are due out by the end of
17 October, like October 23rd, '94. I think it would
18 actually be helpful if we got the regulations out a
19 little bit earlier than that because I think the
20 initial plan is for the first application we would
21 have the corporation file the application six months
22 after the rule was promulgated. So, for example, we
23 could get this rule out in August. We could maybe get
24 the corporation's application in February, which would
25 be nice and would give us a little more time the first

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1 year because I think everyone envisions that the first
2 year will be the most difficult and challenging year
3 for review process and therefore I'd urge the
4 Commission to get the proposed rule out in the street
5 as soon as we can so that maybe we can get this rule
6 into effect a little bit earlier than the statutory
7 mandated date.

8 The application that the corporation will
9 file must include a compliance plan if they are aware
10 of areas that they are not in compliance with with NRC
11 regulations. We are not requiring under these
12 proposed regulations any kind of NEPA submissions, as
13 you know, for the standard application. We've got a
14 categorical exclusion which Chuck talked about a few
15 minutes ago. However, if the licensee is not in
16 compliance with the regulations and knows it, it would
17 be required as part of its compliance plan to submit
18 some information that we could use in an environmental
19 assessment and we would then look and see what the
20 particular deviation is and determine whether we
21 needed to promulgate an environmental assessment. If
22 they're talking about not meeting some kind of
23 radiological requirements, you may very well need to
24 do an environmental assessment. If it's a procedural
25 requirement that they're not in or a reporting

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1 requirement they're not in compliance with, you may
2 very well decide that no further environmental
3 document needs to be promulgated by the NRC. But we
4 did leave open the question of whether environmental
5 assessments would be required if the licensee is not
6 in compliance with all NRC requirements.

7 Once staff got the application, they would
8 not do a predocketing review like they do on power
9 reactor applications, apparently, to make sure it was
10 complete and everything. Because of the time frames,
11 the game plan would be to take what the corporation
12 has and immediately publish a Federal Register notice
13 saying we have received an application, and solicit
14 written public comments from members of the public.
15 As I mentioned earlier, there's no statutory
16 requirement for any public participation, but we think
17 this makes sense and would enhance our information
18 base in which to make a decision and would enhance the
19 credibility of the Commission's decision.

20 The regulation does not itself prescribe
21 how long the comment period would be. The staff
22 expectation at this point, it would probably be a 30
23 day public comment period because of the tight time
24 constraints required in making the regulatory
25 decision.

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1 At the same time that we went out for
2 public comments we would solicit EPA's views. Staff
3 has talked to EPA about this informally and apparently
4 at this point EPA staff is prepared to give NRC views
5 within the 30 day time frame that the members of the
6 public would have. EPA and the NRC staff are talking
7 about a regular program of consultations between the
8 two agencies where they would have periodic meetings
9 on a regular basis. EPA does have some jurisdiction
10 over the facilities. They're aware of what's going on
11 at the facilities and by having this regular dialogue
12 throughout the year it's anticipated that EPA may not
13 have too much to say when it comes down to actually
14 giving us formal comments as part of this comment
15 period.

16 As far as public meetings on the
17 application of the rule itself, it leaves that as a
18 matter of discretion of the Director of NMSS whether
19 we would have public meetings each year. The
20 statement of considerations accompanying the rule says
21 for the year we are going to have public meetings.
22 We're going to go have public meetings at each of the
23 two sites and thereafter it would be a matter of
24 staff's discretion. As a result of the first year's
25 experience under NRC regulations there are lots of

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1 questions, there's a lot of public interest, there's
2 a lot of letters coming in and everything else, the
3 staff may very well in future years want to go out and
4 have future meetings at the site and we'll just
5 proceed on a case by case basis and maximize our
6 flexibility there, but guaranteeing the meeting the
7 first year.

8 The decision that would be made would be
9 based on information contained in the record. So,
10 staff may have lots of meetings with the corporation,
11 with members of the public and everything else. If
12 information at these meetings the staff relies upon in
13 making decisions is needed, it will be put into the
14 public docket so that we will be part of the official
15 record of the agency. The contemplation is the entire
16 record would be public except for any portions that
17 would be proprietary information or classified
18 national security information should that need to be
19 part of the record.

20 The game plan under the proposed regs is
21 the NMSS director would render a written decision
22 within six months after receipt of the application,
23 which means if you talk about an April 15th
24 application date you're talking about an October 15th
25 NMSS decision. Certainly with respect to the first

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1 decision the staff contemplates consulting with the
2 Commission first before they issue any kind of
3 decision. Personally I could envision at least one
4 Commission meeting before staff wrote anything where
5 they'd want to sit down and brief the Commission and
6 talk about their experiences and what they were
7 inclined to include to see what kind of input they
8 wanted to receive from the Commission, at least for
9 the first certification.

10 I think the degree of staff consultation
11 with the Commission in future years I think will in
12 large part depend on level of Commission interest and
13 what the experiences have been with the operation of
14 the facilities.

15 If, as part of the review of the
16 application, staff determines that the corporation is
17 not in compliance with some NRC reg, they would be
18 given an opportunity to rectify that efficiency or to
19 submit a compliance plan with the NRC. If, in the
20 middle of the process, the corporation does submit a
21 compliance plan to the NRC, we have not provided for
22 any kind of mandatory public participation. I think
23 what would happen then we would deal with that on a
24 case by case basis. One, we would have to go to EPA
25 and get their views on any compliance plan and that's

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1 in the regs. But other than the EPA consultation,
2 depending on what the issues and how early in the
3 process it is, you may or may not want to put another
4 Federal Register notice asking for any public
5 comments. You may want to hold public meetings.

6 I think a lot is going to depend on what
7 the deviation is, how late in the process it is,
8 what's the significance of the deviation and I think
9 we just want to mandate total flexibility in that
10 regard as far as what kind of procedures we would use
11 on any kind of late filed compliance plan that arise
12 from a staff review of the application.

13 After the staff makes the decision, we
14 would publish the decision in the Federal Register.
15 During this whole process, we would not impose ex
16 parte or separation of function rules, which means the
17 corporation, members of the public and the NRC staff
18 would be able to talk with anyone without any kind of
19 legal constraints. Now, as part of staff's open
20 meeting policy, meetings with the corporation are
21 going to be open to the public unless portions involve
22 classified information or proprietary data, but it
23 will give the corporation the opportunity or anyone
24 else to talk to the Commission or staff as they need
25 appropriate and it will give the Commission unfettered

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1 access to the staff to talk about any issues of
2 concern to the Commission.

3 The only concern will be is if there's
4 factual information or other information that you're
5 going to rely upon in making a decision, we're going
6 to have to make sure those communications are made
7 public so it's part of the record of the proceeding.

8 I assume also as part of the consultation
9 process -- I focused on EPA, but OSHA does have some
10 jurisdiction over the facilities and although it's not
11 provided for in the regulations, the staff's intent
12 would be to definitely consult with OSHA as part of
13 the process. I think we're also going to want to be
14 talking to the state and local governments that are
15 involved as well and make sure that their views are
16 heard as part of the process. But we sort of crafted
17 these regulations to maximize our flexibility.

18 (Slide) Now I want to turn to slide 16 is
19 where I'm at now. I've got a mistake on the slide I
20 want to rectify. The slide itself is correct, but
21 what was handed out as part of the package is
22 incorrect.

23 The slide says, within 30 days after
24 publication of decision, the corporation or members of
25 the public may file a petition seeking Commission

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1 review. That should be 15 days, not 30 days.

2 Basically we decided that before anyone
3 has an opportunity to go to court on the matter we
4 should establish a process that gives the agency a
5 chance to rectify any mistakes it made in its decision
6 or if anyone comes up with any new information or
7 anything we failed to consider to fully address the
8 matter.

9 What we've provided for in the process
10 then is that members of the public or the corporation
11 could file a petition for review with the Commission.
12 The corporation, for example, could find that they
13 were dissatisfied with one of the conditions we
14 imposed upon them and wanted to challenge it and asked
15 us to reconsider. The Commission will receive such
16 petitions. We would allow other interested persons to
17 respond to the petition within ten days.

18 One of the interesting questions that we
19 had to deal with was, "Well, who are you going to
20 allow to appeal the decision since you really don't
21 have a formal licensing process or something else and
22 you really don't have parties?" What this proposed
23 rule suggests is that anyone who submitted written
24 comments or anyone who actually spoke at one of the
25 public meetings would, in effect, have standing to be

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1 able to petition the Commission to reconsider or to
2 modify the Director's decision.

3 Unless the Commission granted the petition
4 or otherwise acted within a 60 day time period, the
5 Director's initial decision would become final agency
6 action and it would become effective then at that
7 point. This is unlike the power reactor licensing
8 process where usually the initial decision after a
9 Commission review becomes immediately effective during
10 administrative appeals. We decided in this process
11 that it was best because of the short time frame and
12 the Commission involving to let's not have anything
13 effective or not let anyone go into court until the
14 Commission had finished its review of the matter. If
15 you add the 60 days onto the October 15th thing, we
16 end up in the end of December and hope you'll all be
17 here right after Christmas to make a decision.

18 CHAIRMAN SELIN: It only takes three to
19 make a quorum.

20 MR. ROTHSCHILD: We've given the
21 Commission a lot of latitude as far as the procedures
22 that it wants to use in its review of the petitions.
23 We are going to allow the Commission by order to do
24 whatever it wants to do. Basically we'd use normal
25 process. If you want written views of the parties in

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1 some particular ratio, you could do so. If you wanted
2 to have oral arguments you could request oral argument
3 by participants. If you even wanted to refer some
4 factual issue to a licensing board for some long-term
5 resolution of a factual issue, you'd have the capacity
6 to do that.

7 After the Commission issues the
8 certificate, the corporation will have the capacity to
9 ask the Commission to amend the certificate. We will
10 have a 50.59 process that the staff has alluded to
11 earlier that will allow them to make minor changes
12 without prior NRC review. But if they want major
13 changes they're going to need to come to the NRC.
14 We've again used our statutory flexibility to maximize
15 our procedural flexibility.

16 COMMISSIONER REMICK: Trip, excuse me.
17 I'm having a little bit of problem with amending the
18 certificate versus -- I'm a little bit lost here.

19 MR. ROTHSCHILD: If I'm using the word
20 "license," I shouldn't be. I'm talking amending the
21 certificate.

22 COMMISSIONER REMICK: That's where I'm
23 having the problem. What's the certificate going to
24 be?

25 MR. ROTHSCHILD: Well, we've issued a

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1 decision, in effect, and we've said in effect, "You're
2 okay to operate," based on the application that they
3 submitted and the terms and conditions there, plus
4 whatever other conditions the Commission imposed as
5 part of its review process. Now, I assume as -- once
6 the Commission has made its decision, you've really
7 got to document that the corporation knows it has to
8 comply with. It's got the agency regulations and it's
9 got the terms and conditions that it's set forth in
10 its application. If they want to make a dramatic
11 change in its operating procedures or other kinds of
12 items, they're having problems, operational problems
13 with a facility that require some amendments, they're
14 going to have the opportunity to come in in this
15 process and say, "We came in to you and told you we
16 were going to do this, but we're not able to do that
17 for some reason and we need your approval because this
18 is fairly significant to make some changes." This
19 will give the Commission an opportunity to look at the
20 situation afresh.

21 What we're intending to do procedurally
22 here is to leave it in the Director of NMSS to make a
23 discretionary decision as far as what kind of
24 procedures that we want to use. If it's minor
25 amendments to the certificate, then there's probably

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1 not going to be any reason to go out and solicit
2 public comments or to hold any kind of public
3 meetings. But if they're real major changes that
4 they're talking about to the facility, the Director of
5 NMSS may want to invite written comments. You may
6 want to have public meetings and we'll just proceed on
7 a case by case basis, depending on what the situation
8 is.

9 The corporation, since it's got an annual
10 submission requirement, may try to hold off on a lot
11 of requirements until the next application process
12 rather than submitting mid-term modifications. I
13 think this is an area where we're going to have to get
14 some experience again as well. It's very hard for us
15 to reflect how this is going to actually work in the
16 real world at this point.

17 COMMISSIONER REMICK: I guess their
18 certificate is going to be far more substantial than
19 I envision. I thought the certificate was that they
20 met the requirements and so forth, any conditions.
21 But when you talk about 50.59, I thought you were
22 applying that to a certificate. I can see they might
23 want to make modifications to the facility, but I
24 assume all that facility is not going to be defined
25 annually in the certificate. I'm having some problems

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1 following that.

2 MR. BERNERO: Actually, remember the USEC
3 provides or submits an application.

4 COMMISSIONER REMICK: Right.

5 MR. BERNERO: That's what they would
6 amend.

7 COMMISSIONER REMICK: Right. Okay.

8 MR. BERNERO: They would say in some
9 particular I have to amend this application. The
10 certificate reflects on that and approves it or
11 doesn't approve it.

12 CHAIRMAN SELIN: You basically have two
13 documents. You have one which is the moral equivalent
14 of a license and the other which is a finding. If I
15 understand correctly, everything that we've been
16 talking about pretty much has been this application
17 which is effectively a license. It's a once and for
18 all document. It can be amended but in the absence of
19 amendment it doesn't have to be resubmitted each year.
20 That should be called an application.

21 COMMISSIONER REMICK: That I can envision.

22 CHAIRMAN SELIN: And that can be changed
23 by 50.59 type procedures, which I assume will be 73.59
24 procedures.

25 MR. BERNERO: Yes.

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1 CHAIRMAN SELIN: The second is that
2 there's a finding which I guess is the certificate.
3 It's not exactly the language that Mr. Rothschild has
4 been using, but one would have an application. This
5 application would be permanent except as amended. It
6 could be amended through a 50.59 type procedure and
7 then there would be an annual certificate that the
8 Director of NMSS would submit which would be a
9 certification of compliance with this application.

10 COMMISSIONER REMICK: Yes.

11 MR. BERNERO: It is common practice in
12 material licensing that the application commitments
13 are adopted verbatim into the license and the license
14 says, "And you must do as you said in so and so part
15 of the application."

16 COMMISSIONER REMICK: Will we have
17 anything -- after the application is reviewed, will we
18 have any kind of a document that is not a license but
19 equivalent to a license?

20 MR. BERNERO: Finding, yes. We will have
21 a safety and safeguards evaluation, a finding, you
22 know, that's the basis of the finding.

23 COMMISSIONER REMICK: Other than the
24 certificate. The certification is --

25 MR. BERNERO: Well, certification is the

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1 formal act of publishing a finding and reporting to
2 the Congress.

3 CHAIRMAN SELIN: You're going to have two
4 documents. You're going to have an application as
5 amended by the review process and when it's all done--
6 I mean it's not clear from this discussion whether
7 NMSS will issue the license or whether NMSS will go
8 back to USEC and say, "If you want a finding you will
9 have to amend the application." But however you go
10 through that process, at the end of this point there
11 will be a document, an agreed document, between USEC
12 and NMSS which will serve as what in the rest of our
13 world is a license. Let's call it an approved
14 application. That's the thing that's going to be
15 amended in 50.59 type --

16 MR. ROTHSCCHILD: Your finding is actually
17 your approval of that document.

18 CHAIRMAN SELIN: No, no, no, no, no,
19 because that application is not an annual process, I
20 don't think. Is it?

21 MR. ROTHSCCHILD: Well, they will be
22 submitting an application every year and they may be
23 updating it under the process that we're talking
24 about. But you'll have a piece of paper that you
25 will --

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1 CHAIRMAN SELIN: I think that there's
2 requirement for a little further thinking this out.
3 There should be a document, and allow me to call it a
4 license because for all intents and purposes -- which
5 is a permanent document.

6 MR. ROTHSCHILD: Sure.

7 CHAIRMAN SELIN: They submit it once.
8 They put in an application for something that I'll
9 call a licensee. I'm sure you'll find another word to
10 comply with the statute. You would review, the
11 Commission might get involved, there will be some back
12 and forth between USEC and the NRC. There might even
13 be comment on that. At the end of this first cycle
14 there will be an approved permanent document. When I
15 say permanent, it's not unchangeable, but it doesn't
16 arbitrarily --

17 COMMISSIONER de PLANQUE: It's a basis.

18 CHAIRMAN SELIN: It's a basis. Each year
19 USEC will come in with a document that presumably will
20 do two things. One, it will request changes in this
21 basis and, two, it will be their assessment of whether
22 they comply with this document or not.

23 As I've read the annual application, it
24 doesn't seem to me that they're going to have to file
25 for a license each year, but rather they're going to

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1 come in with a self-assessment based on what's
2 happened to say, "We believe we still comply with this
3 basis." Not an annual license but an annual
4 assessment or evaluation which is the basis for your
5 analysis and review. Is that wrong? Is that what you
6 expect?

7 MR. BERNERO: I think what they're really
8 saying is, "And now for this year we request
9 certification."

10 CHAIRMAN SELIN: Right.

11 MR. BERNERO: And the basis of
12 certification is the same as last year except in these
13 two or three particulars.

14 CHAIRMAN SELIN: Yes. See, I think we
15 have a serious problem in thinking out what these
16 documents are. My own suggestion is you go back to a
17 licensing process and then change the words to be
18 appropriate. I mean there is a license application
19 consistent with the rules. You process that
20 application. The first year we have to do two things.
21 We have to process the application and find compliance
22 with the application simultaneously. Then each year
23 thereafter there will be amendments which might come
24 in once or they might come in through the year. You
25 have to decide that, but there will be an application

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1 or a self-assessment from the USEC saying, "We think
2 you should find, you should certify, you should
3 certify that we are in compliance with this basis for
4 the following reasons," and then you make a finding on
5 that.

6 So, the first year what we have to do is
7 really quite different from thereafter. We have to
8 establish the basis and find that they comply with the
9 basis and thereafter we just have to plan it. That
10 may be wrong. One should be very suspicious of off-
11 the-cuff findings, but like Commissioner Remick I've
12 been very uncomfortable with the language and I think
13 it's because of this confusion between the assessment,
14 a process, and the basis, substance, a noun, a thing.

15 COMMISSIONER ROGERS: Well, without adding
16 to the confusion, I hope, I think the real problem
17 crept in here in your presentation when you introduced
18 the word "certificate." Up until that point we were
19 talking about certification. Certification is a
20 process, certificate is a piece of paper and it may be
21 a different kind of piece of paper from other pieces
22 of paper, such as the application, or it might not.
23 I think that's where the real -- you know, it hit me
24 that the problem really arose because all of a sudden
25 we started talking about a certificate. Well, what's

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1 a certificate? Certification is something we're
2 obligated to do by law. That's a process. We have to
3 issue something but not necessarily issue a
4 certificate. We issue a certification.

5 So, I think there is the question how many
6 pieces of paper represent the annual culmination of
7 our efforts and I think that really has to be
8 clarified.

9 CHAIRMAN SELIN: I think there's a basis
10 and I think there's a finding and the amendments are
11 to the basis, not to the finding. Somebody could
12 contest the finding, and I think you ought to go back
13 -- I won't say to square zero. There's been a lot of
14 illuminating work. You ought to go back and start out
15 with there's a basis which has to be kept up to date
16 in some document, but the document only changes when
17 it's changed and then there's a finding which is done
18 on an annual basis which has to be issued each year
19 and give them names, talk about which of the processes
20 have to do with updating the basis and which of the
21 documents have to do with contesting the --

22 MR. ROTHSCHILD: Yes. The term
23 "certificate of compliance" actually comes out of the
24 statute.

25 CHAIRMAN SELIN: Well, but we're not

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1 amending the certificate, we're amending the basis.
2 I think certificate amendments is wrong.

3 COMMISSIONER de PLANQUE: Yes.

4 COMMISSIONER ROGERS: Yes, I think
5 certificate is --

6 COMMISSIONER de PLANQUE: It leads you
7 down the wrong trail.

8 COMMISSIONER ROGERS: Yes, that started
9 it.

10 CHAIRMAN SELIN: To me the certificate
11 would be the finding. The annual finding would be
12 expressed in a certificate of compliance. But there's
13 also a basis which is a license-like --

14 MR. ROTHSCHILD: We'll look at that.

15 (Slide) The next slide is slide 19 which
16 deals with the enforcement process. We will have the
17 full authority to revoke, suspend or modify the basis,
18 for lack of a better word that we've got agreement on,
19 throughout the process. And if we choose to do so,
20 what we intend to do is give the corporation the
21 opportunity to respond to writing to any proposed
22 enforcement action. We're not giving them any right
23 to an adjudicatory hearing or anything else at this
24 point. In an appropriate case if the Commission wants
25 to give the corporation greater procedural rights, the

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1 Commission under these regulations would have the
2 authority to do so.

3 With respect to civil penalties under this
4 statutory scheme, they're available only for
5 violations of Section 206 of the Energy Reorganization
6 Act which relates to reporting of defects and
7 regulatory violations. As the Commission may recall,
8 in the legislative proposals that it has before
9 Congress right now, it would expand our authority in
10 this area and give us full civil penalty authority
11 over the corporation.

12 Should we decide to impose the civil
13 penalty, this would be for violation of Section 206 of
14 the Energy Reorganization Act, we would give them a
15 formal adjudicatory hearing before a licensing board.
16 This is the only place in the entire set of
17 regulations where we're talking about formal
18 adjudicatory hearings. We're also allowing members of
19 the public to request enforcement action through the
20 equivalent of a 2.206 process here.

21 At the last Commission meeting on June
22 1st, Commissioner Remick in particular was interested
23 in other procedural options that the Commission might
24 follow in addition to the one that the staff was
25 proposing so the Commission would have a full range of

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1 options to choose from. Those options are spelled out
2 in some details in attachment to the paper and the
3 next two slides, 21 and 22, go through those
4 procedural options. Let me just highlight them a
5 little bit.

6 (Slide) The first one is one I don't
7 commend to you and that's basically no public
8 participation. It says the statute doesn't require
9 any, let's not give any. As I said earlier, I don't
10 think this serves the Commission very well. We need
11 public information and we need credibility to our
12 decisions. So, I think too much has been said on
13 Option 1 already.

14 With respect to Option 2, it changes the
15 process slightly. It says because of the importance
16 of the decision, the Commission should make the
17 initial decision rather than the staff. Have staff
18 come up to the Commission with a paper and a
19 recommendation for the Commission and have the
20 Commission make the decision. One downside of this,
21 it may slow down the process a little bit because it
22 means a major staff paper that's going to take a lot
23 of coordination to get the thing through the staff and
24 to the Commission.

25 There's a little suboption here and that's

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1 to say the first certification is particularly
2 significant and maybe for the first certification have
3 the Commission do it rather than the staff and
4 thereafter have the staff make the initial decision.
5 That's something the Commission is just going to have
6 to decide, what role you'd like to play in this
7 process and when.

8 COMMISSIONER ROGERS: Under that option,
9 Trip, would that necessarily introduce any ex parte
10 relationship with the staff?

11 MR. ROTHSCHILD: No, it would not.

12 COMMISSIONER ROGERS: It would not.

13 MR. ROTHSCHILD: And under that particular
14 option, in order to give us some flexibility, what we
15 would do is allow parties to file petitions for
16 reconsideration with the Commission so if the
17 Commission made any mistakes or anything else, we
18 would be able to rectify them or if they had any new
19 information we wanted to rely upon, we could change
20 the decision before the parties went to court. So, we
21 would provide for a reconsideration process there,
22 although that's not mandatory and the Commission could
23 establish a process where it was the final decision
24 without mandating any kind of process for
25 reconsideration. Parties could always come in on

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1 their own and ask the Commission to reconsider, but it
2 wouldn't be as a matter of right as it would be under
3 that particular option.

4 (Slide) Another option which I don't
5 commend to you is have NMSS and the staff issue a
6 proposed decision rather than an initial decision.
7 They would get pretty far along in the review process.
8 They would then issue a proposed decision and you
9 could then go out for public comment on a proposed
10 staff decision. Rather than commenting just on the
11 application, the public could then comment on an
12 actual staff view of the application.

13 I think because of this one year -- this
14 time frame to make decisions, I'm not so sure this is
15 realistic. It's going to take the staff a
16 considerable amount of time, particularly in the first
17 application, to reach a decision and then to open up
18 the public comment period very late in the process may
19 unduly complicate the scheduling considerations.

20 The fourth option is to say that in the
21 case where the Commission chose to deny a certificate
22 give the corporation a right to go get a hearing
23 before a licensing board. It could be an informal
24 hearing --

25 CHAIRMAN SELIN: Say this again. In the

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1 case that --

2 MR. ROTHSCHILD: The Commission chose to
3 deny the application --

4 CHAIRMAN SELIN: Do you mean literally the
5 Commission or do you just mean the agency?

6 MR. ROTHSCHILD: Literally. It could be
7 the Commission or the staff.

8 CHAIRMAN SELIN: Okay.

9 MR. ROTHSCHILD: You could have a process
10 where you say staff issues an initial decision and if
11 the initial decision is we don't like the application
12 and we've asked you to submit a compliance plan and,
13 A, you didn't submit a compliance plan or we reviewed
14 the compliance plan and we don't like the compliance
15 plan either and we're just at an impasse with you, at
16 that point rather than referring the matter up to the
17 Commission, you could refer the matter to a licensing
18 board and the Commission could obviously review any
19 licensing board decision that came out of that
20 process.

21 I've got some concerns again because of
22 the one year time process of trying to put a licensing
23 board hearing into any part of this process, but it is
24 an option that's available to the Commission.

25 The fifth option would be instead of

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1 having written comments have some kind of public
2 hearing early in the process, something that would be
3 more than a public meeting, some kind of board, some
4 kind of tribunal. Once again because of time
5 constraints, that's not an approach that I would
6 commend to you, but the staff and OGC both felt it
7 would be appropriate to give the Commission a wide
8 range of options so you could think about when do you
9 want to get involved and how much public participation
10 do you want in what form.

11 With that I think I'll conclude the
12 procedural portion.

13 COMMISSIONER ROGERS: Trip, excuse me.
14 One question on four. Couldn't the Commission -- the
15 Commission has that discretion anyhow. In other
16 words, if something was appealed to them, they could
17 decide to give it to a licensing board.

18 MR. ROTHSCHILD: That's one of the things
19 I mentioned earlier. As part of your review process,
20 if you had a petition for review, you could ask for
21 oral comments, you could ask for written comments or
22 you could send the matter to a board if you had a
23 factual dispute that you wanted a board to resolve.
24 We're really trying to maximize the flexibility in
25 these proposed regs.

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1 CHAIRMAN SELIN: I believe that actually
2 there are two major options available that you haven't
3 talked about and they're not six and seven. They're
4 two points in which some options are available. The
5 first has to do with interim operation. In other
6 words, I think you've taken too literally the idea
7 that there has to be a final report each year to the
8 Congress and the absence of that report by implication
9 that the plants have to close down. I think you ought
10 to take a look at a procedure which has a set of
11 default conditions.

12 In other words, the agency looks towards
13 an annual report but the annual report may be don't
14 have enough information to tell you what's new since
15 last year. We've done our homework but there's a
16 significant public dispute or there's a compliance
17 plan that we're not happy with, et cetera, and look at
18 a set of default procedures so that we don't have to
19 necessarily close all of the loops each 12 months.
20 That's too tight a schedule. It's an unreasonable
21 requirement.

22 So, one option would be to have an annual
23 cycle which if things go smoothly leads to a fully
24 updated report each year. Whether that report is an
25 exception report or from a base report is a detail to

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1 the point, but it does allow what amounts to a set of
2 default conditions and an interim operation, that we
3 get a serious challenge, a serious petition, go to the
4 Congress and say, "We've exercised our professional
5 judgment. We do not believe that the burden of proof
6 for immediately closing down the plant has been
7 breached, but there are questions. So, we're going to
8 give you an interim report or a provisional report at
9 this point, but the finding is that we can't give you
10 a final finding, so we'll still rely on the finding
11 for 12 months until this is resolved."

12 So, you could have a set of procedures
13 that don't require all of these hearings going to the
14 Commission, public information resolve and compliance
15 plans necessarily in a year. I think that that idea
16 of getting all that said on the air is being too tough
17 on ourselves and at least I'd like -- personally I
18 would like you to investigate an annual cycle, but
19 which allows for what happens if the hearings aren't
20 finished, what happens if we have found them not to be
21 in compliance, we haven't settled on a compliance
22 plan. It's got a set of questions that could go
23 beyond the year. We would still make an annual
24 report, but there'd be some defaults as to what would
25 happen. That's one area in which I think at least I

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1 would appreciate an option, an alternative approach
2 that has an annual report but not necessarily an
3 annual finding.

4 The second area in which I personally
5 would like to see some options, I do not like the idea
6 personally of so much flexibility. I think we should
7 spell out a process in advance that basically says we
8 will report every year on October 15th. We will do
9 these things. We will normally allow public meeting
10 or public hearing or comments that we have a standard
11 procedure. We have some reasons for not carrying it
12 out in certain cases. In other words, I wouldn't
13 completely tie our hands, but I personally would like
14 an option that is more predicted and that is more
15 predictable that says, "Here's the way we would do
16 this." If coupled with some defaults and interim
17 operations, then I think that might become feasible.

18 I'm reading what you're saying to be that
19 we need all this flexibility because on the one hand
20 we have enormous flexibility. On the other hand we
21 have a guillotine that comes down every 12 months and
22 chops. If we can arrange for that guillotine to hang
23 in midair, then I think we can afford to give a more
24 predictable regulatory environment where we have laid
25 out what we will do in those cases.

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1 I have a third point I'd like to make. I
2 would like you to look at what the legal problems
3 would be if we just flat out called this thing a
4 license, because that's what it is, and said that in
5 the first year we will issue a license and a
6 certificate of compliance with that license and
7 thereafter we will annually issue a certificate of
8 compliance or non-compliance with an approved
9 compliance plan. Then we have a lot of history of how
10 we handle licenses. Licenses are handled by the
11 director. They come to us and we may decide that
12 license means 2.206, it means separation. It may turn
13 out that there's enough machinery that goes with
14 formally calling this a license that the General
15 Counsel would advise against our adopting it, but I
16 personally would like to see an option that keeps this
17 as close to a license as possible and as close to our
18 licensing procedure as possible because, in effect,
19 the staff continuously finds that a licensee is either
20 in compliance with his license or has to close down.

21 So, it's not really such a burden to do
22 that on a continuing basis as long as we think out
23 that we have a two step process.

24 My fourth observation is that the first
25 year we really do have a two step process and it's

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1 qualitatively different from thereafter. We need to
2 get an application, which I'll call a license, which
3 you may later on say we shouldn't have called it a
4 license and it has to be approved. Then we have to
5 find that the licensee is complying with that license.
6 That's an awful lot to do in the first year and you
7 may decide that that's too much to do, that we should
8 have a fall back position to function --

9 MR. TAYLOR: We'll do that. We'll do
10 that, sir.

11 CHAIRMAN SELIN: But the only two points
12 I really would like to make is one is sort of an
13 observation, one is personal. The observation is I
14 hope you are reading too literally the requirement for
15 an annual report of compliance. I think your
16 procedures are consistent with that as something that
17 absolutely must be done finally, et cetera, and that
18 really ties our hands. I hope that the statute can be
19 read differently. Yes, we can report each year, but
20 some of the work that we report can still be in
21 progress.

22 My own personal opinion is I personally
23 prefer a more predictable even though it gives us less
24 flexibility standard set of procedures. Maybe we
25 don't want them by 1994. Maybe that's too soon to

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1 work them out, but I would like to see something that
2 is more predictable. This is a kind of set of
3 facilities that are not all that dangerous and they're
4 not all that hard to understand and we should be able
5 to run them -- I mean to regulate them within the
6 limits of the law closer to the way we do fuel cycle
7 facilities.

8 MR. ROTHSCILD: Let me make a comment, if
9 I could.

10 CHAIRMAN SELIN: Please.

11 MR. ROTHSCILD: On your first suggestion
12 about flexibility of not meeting the annual
13 requirement, in the proposed rule, the portion I
14 didn't talk about, we talked about using what we call
15 a term embodied in the Administrative Procedure Act
16 called the timely renewal doctrine. The proposed
17 regulations provide that we would utilize that
18 doctrine so in case we couldn't make a decision the
19 continuing certificate would continue to remain in
20 effect until we were able to make a decision. I think
21 it's an open legal question the way the statute is
22 written whether we have the flexibility under the
23 congressional language to use the timely renewal
24 document to extend beyond a year period. It's one of
25 the specific questions in the statement of

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1 considerations that we specifically asked for comments
2 on as whether people read the statute as giving us
3 that flexibility.

4 So, we were hoping to be able to utilize
5 it as well.

6 CHAIRMAN SELIN: But this is a lot less
7 than renewal. We're just talking about timeliness of
8 a finding that they're in compliance, not that the
9 license has expired and they're running, in effect,
10 without a license until the license is --

11 MR. ROTHCHILD: You do have a requirement
12 here. They're not to operate without a certificate or
13 a compliance plan approved. The question is whether
14 we can use this timely renewal doctrine or something
15 equivalent to it to stretch that period out. I think
16 it's an issue well worth getting public comment on and
17 I think it's something the Commission is going to have
18 to do a lot of thinking about on the issue of the
19 final rule.

20 CHAIRMAN SELIN: And I'm personally much
21 more interested in options at that level than down in
22 whether it's a permanent, it's an immediately
23 effective or provisional -- clearly those have to be
24 settled also. But I think those framework issues have
25 to be settled and then a lot of the others will fall

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1 in place.

2 Commissioner Rogers?

3 COMMISSIONER ROGERS: No.

4 CHAIRMAN SELIN: Commissioner Remick?

5 COMMISSIONER REMICK: Going back to your
6 comment, Trip, the timely renewal then would mean that
7 last year's certification would continue until the new
8 one was made. Is that --

9 MR. ROTHSCHILD: Yes, sir.

10 COMMISSIONER REMICK: -- the purpose of
11 the timely renewal provision?

12 MR. ROTHSCHILD: Yes. Yes, sir.

13 You know, the other comment I want to make
14 about flexibility, and I certainly did emphasize
15 flexibility and I hope I didn't over emphasize it, I
16 think the regular process that we're talking about
17 would be we'd get the application, we have a 30 day
18 comment period presumably. We may or may not have a
19 public meeting. We have a staff decision, we have a
20 process where people come and have an opportunity to
21 petition the Commission and ask them to modify the
22 staff decision if need back. We do have some
23 regularity to the process.

24 CHAIRMAN SELIN: One of the points that I
25 reacted to is the Congress should know that on a

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1 certain date they will see a finding from us, not
2 where that can be within two moons from one year to
3 another. If we have the flexibility of what goes into
4 that finding, then we can afford to say, "On October
5 15th each year or October 23rd you'll have a finding."
6 But if the real process in which we're reporting is
7 continuing, that finding may have some open points.
8 Rather than giving us an extra six weeks the first
9 time through, I'd like a regular calendar, although
10 some vagueness about exactly what's required of us at
11 a particular thing.

12 I'm sorry. Commissioner Remick?

13 COMMISSIONER REMICK: No, I was just going
14 to say I agree very much with the Chairman's concept
15 of having -- we're going to have an application,
16 something that indicates that we accept or not, and I
17 prefer a license too if we can use that term, that we
18 have some kind of a document and then we have this
19 annual certification of whether people are meeting the
20 requirements specified in that document, rather than
21 talking about amending a certificate and so forth. To
22 me it seems like a more logical approach. We talk
23 about something like a license and then we have some
24 kind of an annual certification process which contains
25 our findings.

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1 It appeals to me just because it's more
2 consistent with what we're used to.

3 CHAIRMAN SELIN: The amendment process
4 could be continuous. There's no reason we would have
5 to wait until October 15th to process an amendment to
6 this license along the way.

7 Commissioner de Planque?

8 COMMISSIONER de PLANQUE: Yes, I would
9 agree with most of the comments that have already been
10 made. I would just add one more word of caution on
11 looking at terminology. I think we've gotten
12 ourselves into some problems in the past with some of
13 the terminology we've chosen. The one that comes to
14 mind is the terminology we use with agreement states
15 on withholding a finding of adequacy. So, I would
16 encourage you from word go to be extremely careful
17 about the words we do choose for each part of the
18 process and each document.

19 CHAIRMAN SELIN: The last comment I'd like
20 is sort of pulling back a little bit from what you
21 said. That which we pass as a rule, in other words
22 that which we must comply with, obviously we would
23 like to keep quite a bit of flexibility in that. But
24 it would be desirable in a statement of considerations
25 or what have you to say that the Commission expects

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1 absent something extraordinary that this is the
2 process that we would follow so that there would be an
3 expectation of a highly predictable process, but
4 flexibility in extremis to do something different.

5 We don't need to completely tie ourselves
6 out of the flexibility, but I personally do not think
7 we should have a situation where we're basically
8 telling the public, "We'll figure it out as we go
9 along."

10 I think you guys have done a terrific job.
11 This is something from scratch. In the standards
12 you've achieved something that I didn't think could be
13 achieved, which is a reasonably compact and internally
14 consistent from the start set of paragraphs in the
15 standards to describe the process rather than just
16 referring to something which is like a CLB and saying
17 whatever it is you've got to keep doing that. I think
18 that's outstanding.

19 I think your comments have really
20 illuminated some fundamental questions in what the
21 process is. Obviously my preference is we keep as
22 close to the way we normally do business as we can and
23 still be consistent with the will of the Congress and
24 the resources that are available to us.

25 Mr. Taylor?

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1 MR. TAYLOR: Mr. Chairman, I'd propose
2 that in addition to what we've received from the
3 Commission today that if the Commission has further
4 time to look at the details of some of the technical
5 and other governing parts of the rule we would
6 appreciate a comment back from the Commission. What
7 I would propose we do is take what we have today,
8 particularly with regard to the procedural aspects,
9 and other comments and work on that subject and then
10 come back to the Commission as soon as possible.

11 I would like to move the process so we can
12 get out with the proposed rule. So, we will set up
13 then. If we can get additional feedback as
14 appropriate from the Commission, we'll schedule an
15 additional briefing with another proposed --

16 CHAIRMAN SELIN: Yes. This leads to
17 another question. Does it make sense to float the
18 part of the document that has to do with the standards
19 and the rules while we work out a second document on
20 the procedures, the dynamic part of the process, or
21 would you rather --

22 MR. TAYLOR: We would like to do, if we
23 could do that --

24 CHAIRMAN SELIN: Because there are going
25 to be all the health physicists in the world are going

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1 to have comments on one set that really don't depend
2 on hearing rights and reporting schedules. So, maybe
3 it makes sense to split them into two packages.

4 MR. BERNERO: Separate the technical and
5 the procedural rule.

6 CHAIRMAN SELIN: You might think it's a
7 terrible idea and I only offer it as a possibility.

8 MR. TAYLOR: Let us look at that, sir.

9 CHAIRMAN SELIN: But clearly --

10 MR. BERNERO: We'd like to look at it. My
11 concern would be to really have two proposed rules,
12 the second one being the critical path.

13 CHAIRMAN SELIN: No, you would only have
14 one proposed rule, but you might -- that's really up
15 to you. All I'm saying is you ought to consider the
16 option of moving forward with the technical side while
17 the procedural are worked out. If you decide that
18 that's just too messy or you can't really comment --
19 my thinking was you could comment on the technical
20 without knowing the procedural, although you clearly
21 couldn't comment on the procedural without knowing the
22 technical.

23 MR. BERNERO: That's certainly true.

24 MR. TAYLOR: We'll do that, sir. Thank
25 you.

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1 CHAIRMAN SELIN: Okay. Commissioners,
2 anything else?

3 Thank you very much. Thank you.

4 (Whereupon, at 3:47 p.m., the above-
5 entitled matter was concluded.)
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TITLE OF MEETING: BRIEFING ON PROPOSED STANDARDS FOR
GASEOUS DIFFUSION FACILITIES

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: OCTOBER 26, 1993

were transcribed by me. I further certify that said transcription
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REGULATION OF GASEOUS DIFFUSION ENRICHMENT PLANTS



**PRESENTATION BY NRC STAFF
OCTOBER 26, 1993**

Contact: C. W. Nilsen
Phone: 492-3834

RULEMAKING STRATEGY

- **USE APPLICABLE NRC REGULATIONS AS STARTING POINT**
- **FOCUS ON OPERATIONAL SAFETY**
- **REVIEW OF DOE'S REGULATORY TRANSITION DOCUMENT, U.S. ENRICHMENT CORPORATION'S SUBMITTAL, AND THE GASEOUS DIFFUSION PLANT'S SAFETY ANALYSIS REPORTS**

RULEMAKING STRATEGY (CONT'D)

- **REQUESTED DOE'S VIEWS ON:**
 - **APPLICABILITY OF NRC REGULATIONS TO GASEOUS DIFFUSION PLANTS**
 - **ALTERNATIVE MODELS FOR QUALITY ASSURANCE REQUIREMENTS**
 - **A REQUIREMENT FOR AN ANALYSIS OF ACCIDENTS USING SPECIFIC SAFETY OBJECTIVES (10 MILLIGRAM INTAKE OF URANIUM; 25 REM TOTAL EFFECTIVE DOSE EQUIVALENT)**

DRAFT CERTIFICATION STANDARDS

- **THE CERTIFICATION STANDARDS COVER THREE MAIN AREAS.**
 - **PROCEDURAL REQUIREMENTS**
 - **GENERALLY APPLICABLE NRC HEALTH AND SAFETY/SAFEGUARDS REQUIREMENTS**
 - **SPECIFIC SAFETY AND SAFEGUARDS REQUIREMENTS**

DRAFT CERTIFICATION STANDARDS (CONT'D)

- **CERTIFICATION PROCEDURAL REQUIREMENTS**
 - **INITIAL CERTIFICATION PROCESS**
 - **DENIAL PROCEDURE**
 - **ANNUAL CERTIFICATION**

GENERALLY APPLICABLE STANDARDS

- **SEVERAL SECTIONS OF THE PROPOSED RULE ARE PATTERNED DIRECTLY FROM PART 70 (PURPOSE, SCOPE, DEFINITIONS, ETC.).**
- **THE EMERGENCY PLANNING REQUIREMENTS UPGRADED FROM PART 70 REQUIREMENTS TO INCORPORATE EXISTING DOE SITE PROCEDURES.**
- **INSPECTIONS SECTION INCLUDES PROVISION FOR RESIDENT INSPECTORS.**

STANDARDS (CONT'D)

- **APPLICATION REQUIREMENTS**
 - **SAFETY ANALYSIS REPORT IS REQUIRED WITH APPLICATION.**
 - **ASSESSMENT OF ACCIDENTS TO INCLUDE INTERNAL AND EXTERNAL EVENTS INCLUDING NATURAL PHENOMENA**
 - **NUMERICAL OPERATIONAL SAFETY OBJECTIVES ARE INCLUDED IN THE STATEMENT OF CONSIDERATIONS**

STANDARDS (CONT'D)

- **QUALITY ASSURANCE PROGRAM TO MEET APPLICABLE CRITERIA OF PART 50, APPENDIX B.**
- **MATERIAL CONTROL AND ACCOUNTABILITY/ PHYSICAL SECURITY IS TO BE COMMENSURATE WITH OPERATIONS.**
- **WASTE MANAGEMENT PROGRAM TO REQUIRE FUNDING CONSIDERATIONS FOR ULTIMATE DISPOSITION OF DEPLETED URANIUM AND WASTE**

STANDARDS (CONT'D)

- **REGULATORY REQUIREMENTS INCLUDED BY REFERENCE**
 - PART 19 - NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS:
INSPECTION AND INVESTIGATIONS**
 - PART 20 - STANDARDS FOR PROTECTION AGAINST RADIATION**
 - PART 21 - REPORTING OF DEFECTS AND NONCOMPLIANCE**
 - PART 26 - FITNESS-FOR-DUTY PROGRAMS**

STANDARDS (CONT'D)

- PART 71 - PACKAGING AND TRANSPORTATION
OF RADIOACTIVE MATERIAL**
- PART 70 - DOMESTIC LICENSING OF SNM**
- PART 73 - PHYSICAL PROTECTION OF
PLANTS AND MATERIALS**
- PART 74 - MATERIAL CONTROL AND
ACCOUNTING OF SNM**
- PART 95 - SECURITY FACILITY APPROVAL
AND SAFEGUARDING OF NATIONAL
SECURITY INFORMATION AND
RESTRICTED DATA**

MISCELLANEOUS ITEMS

- **PART 51 IS BEING AMENDED TO ADD A CATEGORICAL EXCLUSION FOR THE ISSUANCE, AMENDMENT, MODIFICATION, OR RENEWAL OF A CERTIFICATE OF COMPLIANCE**
- **THE STAFF HAS INCLUDED PROVISIONS FOR 50.59 TYPE CHANGES THAT DO NOT RESULT IN INCREASED RISK**
- **ALTHOUGH DOE AND USEC REQUESTED IT, A BACKFIT RULE PROVISION HAS NOT BEEN INCLUDED**

CERTIFICATION PROCEDURES STATUTORY REQUIREMENTS

- **NRC MUST ESTABLISH A CERTIFICATION PROCESS.**
- **CORPORATION MUST APPLY AT LEAST ANNUALLY.**
- **NRC MUST CONSULT WITH THE ENVIRONMENTAL PROTECTION AGENCY**

CERTIFICATION PROCEDURES STATUTORY REQUIREMENTS (CONT'D)

- **NRC MUST PROVIDE CONGRESS WITH AN ANNUAL REPORT.**
- **CORPORATION CANNOT OPERATE FACILITIES WITHOUT AFFIRMATIVE NRC FINDINGS.**
- **CERTIFICATE IS IN LIEU OF LICENSE.**

OUTLINE OF PROCESS FOR MAKING DECISION

- **CORPORATION MUST APPLY BY APRIL 15 OF EACH YEAR.**
- **APPLICATION MUST INCLUDE COMPLIANCE PLAN FOR IDENTIFIABLE AREAS OF NONCOMPLIANCE.**
- **FEDERAL REGISTER NOTICE PROVIDING OPPORTUNITY FOR WRITTEN PUBLIC COMMENT.**

OUTLINE OF PROCESS FOR MAKING DECISION (CONT'D)

- **SOLICITATION OF EPA VIEWS.**
- **DISCRETIONARY PUBLIC MEETINGS NEAR SITE
(GUARANTEED FIRST YEAR).**
- **DECISION BASED ON INFORMATION IN THE
RECORD.**
- **NMSS DIRECTOR WILL RENDER A WRITTEN
DECISION WITHIN 6 MONTHS OF APPLICATION.**

OUTLINE OF PROCESS FOR MAKING DECISION (CONT'D)

- **BEFORE DENIAL OF APPLICATION,
CORPORATION GIVEN OPPORTUNITY TO
SUBMIT A PROPOSED COMPLIANCE PLAN.**
- **PUBLICATION OF NOTICE OF THE DECISION IN
FEDERAL REGISTER.**
- **NO EX PARTE OR SEPARATION OF FUNCTION
RESTRICTIONS.**

ADMINISTRATIVE APPEALS

- **WITHIN 30 DAYS AFTER PUBLICATION OF DECISION, CORPORATION OR AFFECTED MEMBERS OF PUBLIC MAY FILE A PETITION SEEKING COMMISSION REVIEW.**
- **THE CORPORATION OR AFFECTED PERSON PROCESS MAY RESPOND WITHIN 10 DAYS AFTER FILING OF THE PETITION.**

ADMINISTRATIVE APPEALS (CONT'D)

- **UNLESS THE COMMISSION GRANTS THE PETITION OR OTHERWISE ACTS WITHIN 60 DAYS OF FEDERAL REGISTER NOTICE, THE DIRECTOR'S INITIAL DECISION BECOMES EFFECTIVE AND FINAL AGENCY ACTION.**
- **COMMISSION BY ORDER COULD ADOPT FURTHER PROCEDURES.**

CERTIFICATE AMENDMENTS

- **AFTER CERTIFICATE ISSUED, CORPORATION MAY REQUEST AMENDMENTS.**
- **IF DIRECTOR DETERMINES THAT PROPOSED AMENDMENTS ARE SIGNIFICANT, WILL PUBLISH FOR PUBLIC COMMENT AND HOLD PUBLIC MEETING IF WARRANTED.**

ENFORCEMENT PROCEDURES

- **CERTIFICATE SUBJECT TO REVOCATION, SUSPENSION, OR MODIFICATION.**
- **CORPORATION WILL HAVE OPPORTUNITY TO RESPOND IN WRITING TO ANY PROPOSED ENFORCEMENT ACTION AND THE COMMISSION MAY ADOPT FURTHER PROCEDURES, IF WARRANTED.**
- **CIVIL PENALTIES AVAILABLE FOR VIOLATIONS OF SECTION 206 OF THE ENERGY REORGANIZATION ACT (REPORTING OF DEFECTS).**

ENFORCEMENT PROCEDURES (CONT'D)

- **ANY HEARING FOR IMPOSING A CIVIL PENALTY WILL BE FORMAL ADJUDICATORY HEARING BEFORE A LICENSING BOARD.**
- **MEMBERS OF PUBLIC CAN REQUEST ENFORCEMENT ACTION THROUGH 2.206 PETITIONS.**

OTHER PROCEDURAL OPTIONS

- 1. COMMISSION OR NMSS DIRECTOR DECISION WITHOUT PUBLIC COMMENT OR PUBLIC MEETINGS. NO PROCEDURES FOR RECONSIDERATION OF AGENCY DECISION.**
- 2. COMMISSION, RATHER THAN DIRECTOR OF NMSS, MAKES INITIAL DECISION AFTER RECEIPT OF STAFF RECOMMENDATIONS. PETITIONS FOR RECONSIDERATION OF DECISION AND RESPONSES THERETO. INITIAL DECISION FINAL AND EFFECTIVE UNLESS COMMISSION ACTS WITHIN 60 DAYS. THIS APPROACH COULD BE ADOPTED FOR FIRST APPLICATION ONLY.**

OTHER PROCEDURAL OPTIONS (CONT'D)

- 3. FOLLOW RECOMMENDED APPROACH, BUT DIRECTOR NMSS WOULD ISSUE PROPOSED RATHER THAN INITIAL DECISION. PUBLIC WOULD COMMENT ON PROPOSED DECISION.**
- 4. FOLLOW RECOMMENDED APPROACH, EXCEPT PROVIDE THAT UPON A DENIAL OF CERTIFICATE INFORMAL LICENSING BOARD HEARING COULD BE HELD UNDER SUBPART L.**
- 5. PUBLIC HEARING WOULD BE HELD DURING CONSIDERATION OF APPLICATION IN LIEU OF NOTICE AND COMMENT.**

SUMMARY AND SCHEDULE

- **RULEMAKING**

- **PUBLISH PROPOSED RULE FOR 60-DAY COMMENT PERIOD**
- **PUBLISH FINAL RULE (OCTOBER 1994)**

- **CERTIFICATION**

- **APPLICATION RECEIVED FROM USEC (~6 MONTHS AFTER FINAL RULE)**
- **DIRECTOR'S DECISION ON APPLICATION WITHIN 6 MONTHS, AND 60 DAYS FOR COMMISSION REVIEW.**

- **ANNUAL DECISION THEREAFTER**