

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: **MEETING ON NRC STAFF INTERACTIONS WITH
STAKEHOLDERS ON NUCLEAR MATERIALS
AND WASTE ACTIVITIES
PUBLIC MEETING**

Location: **Rockville, Maryland**

Date: **Tuesday, November 9, 1999**

Pages: **1 - 115**

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 OFFICE OF THE SECRETARY

4 ***

5 MEETING ON
6 NRC STAFF INTERACTIONS WITH STAKEHOLDERS
7 ON NUCLEAR MATERIALS AND WASTE ACTIVITIES

8 ***

9 PUBLIC MEETING

10 Nuclear Regulatory Commission
11 One White Flint North
12 Building 2, Auditorium
13 11545 Rockville Pike
14 Rockville, Maryland
15 Tuesday, November 9, 1999

16 The Commission met in open session, pursuant to
17 notice, at 9:30 a.m., the Honorable RICHARD A. MESERVE,
18 Chairman of the Commission, presiding.

19 COMMISSIONERS PRESENT:

20 RICHARD A. MESERVE, Chairman of the Commission
21 NILS J. DIAZ, Member of the Commission
22 EDWARD MCGAFFIGAN, JR., Member of the Commission
23 GRETA JOY DICUS, Member of the Commission
24 JEFFREY S. MERRIFIELD, Member of the Commission
25

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

KAREN D. CYR, General Counsel

ANNETTE L. VIETTI-COOK, Assistant Secretary

WILLIAM TRAVERS, Executive Director for Operations

CARL PAPERIELLO, DEDO

EDWARD SCHERER, Manager, Nuclear Regulatory

Affairs, Southern California Edison Company

JACK B. ALLEN, Manager, Columbia Plant,

Westinghouse Commercial Nuclear Fuel Division

ROLAND FLETCHER, Organization of Agreement States,

Radiation Health Program, Air and Radiation

Management Administration, Maryland Department

of the Environment

PETER HERNANDEZ, Employee Relations, American Iron

and Steel Institute

KEVIN KAMPS, NIRS

KATIE SWEENEY, National Mining Association

ROBERT HOLDEN, Director, Nuclear Waste Project,

National Congress of American Indians

JOE RING, Harvard University, Environmental Health

and Safety

ELSA NIMMO, Radiation Safety Officer,

Honeywell-Measurex Corporation

ROY BROWN, Director, Regulatory Compliance,

Mallinckrodt, Inc.

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P R O C E E D I N G S

[9:30 a.m.]

CHAIRMAN MESERVE: Good morning. I'd like to welcome you all to a meeting concerning NRC Interactions with Stakeholders on Nuclear Materials-Related Issues.

As I think most of you know, my name is Dick Meserve, and I am the new guy on the block here. I was sworn in seven days ago--no, nine days ago. Time flies.

And I'm sort of trying to get myself up to speed on a bunch of different issues. I'm joined this morning by, and scattered here through the group ahead of you, are three of my four colleagues.

To my immediate right is Commissioner Dicus, who is really the inspiration for this meeting; Commissioner McGaffigan is there and has raised his hand; and on my left is Commissioner Merrifield, and Commissioner Diaz has arrived. I noted that he was stuck in traffic and that we should proceed without him, and I had noticed he'd arrived. So, I'd like to welcome all of my fellow Commissioner here.

I think that it's symbolic that we have put the Commissioners in amongst all of us, because it's our intention today to have a conversation among the group.

Let me give a little bit of background concerning this morning's meeting: The NRC has had a variety of meetings with reactor licensees on issues of particular

1 interest to that sector.

2 And they have been sort of open-forum kinds of
3 meetings like this one, and when I say reactor licensees
4 concerning reactor issues, they have involved not only the
5 licensees but a variety of different individuals who are
6 interested in or affected by rulemakings and Commission
7 decisions in that area.

8 These meetings are helpful because they provide an
9 important source of ideas. They're helpful because they
10 promote understanding of what the NRC is up to and what the
11 various issues that we confront are.

12 And, quite frankly, they're important because this
13 is an Agency that strives to be open in its processes, and
14 this facilitates the understanding this facilitates the
15 understanding of what we're up to; that there is a concern
16 that's an obvious concern that things that are not done in
17 the open are done behind screens for reasons that they would
18 warrant the exposure to the public, and that's not the case
19 in our decisionmaking.

20 But we want to have openness, not only for the
21 benefit of the illumination of our decisions, but also so
22 that people can have confidence in the reasons for those
23 decisions.

24 This is the first of the meetings with
25 stakeholders on materials and waste issues. As all of you

1 know, the focus of this meeting is on how to improve NRC
2 interactions and communications with stakeholders in this
3 area.

4 We are joined here with people with an interest in
5 differing substantive areas, and our focus today, however,
6 is not on the substance; it's rather much more fundamental
7 and is to try to look at how the NRC communicates with and
8 interacts with various groups that are affected by our
9 decisions in this area.

10 We expect that the people who are around the table
11 have had a diverse set of experiences with the NRC, and
12 we're seeking guidance on what works, what doesn't work,
13 what we should do and what we shouldn't do.

14 I think that this session and this issue is
15 somewhat more difficult in the materials and waste areas
16 than it is in the reactor areas. In the case of reactors,
17 it's a reasonably small group of licensees, there's one
18 major industry association, and a limited number of rather
19 focused stakeholder groups.

20 The materials licensees, by contrast,
21 engage--there are many more of them, and they're engaged in
22 a far wider spectrum of activities. They are more diverse
23 sets of associations and groups who represent those
24 licensees, and there are differing groups that affected by
25 them and are interested in and want to be participants in

1 our processes.

2 I think that we're going to find, and I suspect
3 that we're going to find that there isn't any kind of a
4 one-model that would apply in every case.

5 And I hope that we'll explore some of that this
6 morning so we can get some sense of the processes we should
7 use for interaction in varying areas, with the expectation
8 that one area might differ from another.

9 Our process this morning is relatively
10 straightforward, I think. We're going to open with a Staff
11 briefing that Carl Paperiello is going to start.

12 Carl, of course, is with the EDO, Executive
13 Director of Operations with the Deputy who is responsible
14 for Materials. And he is going to describe what NMSS, the
15 Nuclear Materials Safety and Safeguards Group, he's going to
16 describe what they have done to engage licensees in various
17 of their rulemaking activities and policy development
18 activities, and engage the public, and do that, walk through
19 various of the areas.

20 He's going to discuss from the NRC's point of
21 view, whether these procedures have been helpful, and try to
22 extract from us, some of the lessons that we think we should
23 learn from those experiences.

24 I'm then going to walk around to some of the other
25 participants here. As all of you know from the invitation

1 letter, we've asked each of you to give a very brief
2 statement, five minutes or so as a maximum limit.

3 Provide us with some notion of who you are, what
4 the nature of your interactions with the NRC has been, and
5 what your suggestions might be as to how we could improve
6 our processes.

7 Once we've given everyone a chance to sort of lay
8 their cards on the table, then it's our hope for the
9 remainder of the morning to engage in a discussion among the
10 full group.

11 If there are no comments from my fellow
12 Commissioners--

13 COMMISSIONER MERRIFIELD: Well, actually, there
14 is.

15 CHAIRMAN MESERVE: There is? Please.

16 COMMISSIONER MERRIFIELD: This is actually the
17 third one of these meetings that I've had a chance to
18 participate in since joining the Commission, and like you, I
19 had my first one of these meetings very shortly after I
20 joined the Commission. That was about a year ago at this
21 point.

22 I found them to be instructive. I'm certain that
23 our new Chairman will enjoy them as I have. And certainly I
24 want to initially thank the participants for coming by and
25 participating in this.

1 For me, it's very important, it's very
2 instructive, and very helpful in making the decisions that
3 we need to make as a Commission, and I did want to express
4 that this morning.

5 CHAIRMAN MESERVE: If there are no other opening
6 comments, why don't we proceed? Carl?

7 DR. PAPERIELLO: Thank you. Good morning,
8 Commissioners, invited stakeholders, and members of the
9 audience.

10 Could I have Slide 2, please?

11 The purpose of today's meeting is for a cross
12 section of NRC's stakeholders to present to the Commission
13 and the Staff, their views on their interaction with the
14 NMSS staff on a variety of issues within the nuclear
15 materials and waste management strategic arenas.

16 The purpose of the meeting is not to dwell on the
17 specific technical or regulatory issues, but on how the NRC
18 solicited stakeholder input, how the NRC Staff responded to
19 stakeholder input, and how improvements can be made in the
20 stakeholder participation processes used by the NMSS Staff.

21 Slide 3, please.

22 Specifically, we'll discuss the process for
23 rulemaking and other regulatory activities in the areas
24 shown on the slides. We could have added many more
25 additional topics, but the number of stakeholders would have

1 been too large for meaningful discussion.

2 We believe, however, that the information obtained
3 today will be applicable for improving communications with
4 all of our stakeholders.

5 Slide 4.

6 The first case example is a case in which the
7 traditional process of an advanced notice of proposed
8 rulemaking was used. In addition, we held public workshops.

9 I would note that the Office of Research had the
10 lead on this particular rulemaking which was in the era
11 between 1996 and 1998, the span of this particular activity,
12 but it had considerable NMSS support.

13 The proposed issue was to strengthen the role of
14 the RSO, Radiation Safety Committee, and in return for
15 stronger management, expand the changes the licensees could
16 make in its program without a license amendment.

17 Public workshops were held and advanced notice of
18 proposed rulemaking was published on November 14, 1996.

19 One of the Agreement States had a similar idea and
20 helped develop proposed rule language. However, as a result
21 of public comments and recommendations of the ACMUI, the
22 rulemaking was terminated.

23 The reasons for the adverse comments was the draft
24 rule language was overly prescriptive, and that there were
25 too many variances in the type of broad scope facilities and

1 their management structures to encompass in a rule.

2 Subsequently, what was proposed in the rule was
3 offered as a licensing option in the Standard Review Plan.
4 I think this is an example where the Staff heard the
5 feedback and responded appropriately.

6 Can I have the next slide, Slide 5?

7 Part 31 authorizes possession and use of byproduct
8 material and fixed gauges under a general license, provided
9 the gauges are manufactured and distributed in accordance
10 with the requirements of Part 32.

11 Over the years, there have been problems with
12 these devices because they have been lost, and as a
13 consequence, been improperly disposed of. Although there
14 could be unacceptable dose consequences, most of the actual
15 consequences have been economic.

16 On occasion, smeltings in steel mills result in
17 costly cleanups, and if detected before smelting, scrap
18 dealers, recyclers and steel mill operators have the expense
19 and other problems of disposal, and there has been
20 considerable stakeholder input on this issue.

21 In response to Commission direction, the Staff
22 published the proposed rule changes. Since some Agreement
23 States had already set up programs to increase control over
24 generally-licensed devices, the Staff held a workshop with a
25 number of Agreement States to benefit from their experience.

1 A public workshop was also held to provide a forum
2 for manufacturers, distributors, and users of
3 generally-licensed devices to discuss implementation aspects
4 of the proposed rule and other related issues.

5 The Staff believes the workshops were effective.
6 Feedback was received directly from the participants of each
7 of the workshops during and following the workshops.

8 The Staff believes that stakeholders seem to enter
9 the process with little confidence that their participation
10 would make a difference, but left the workshop with the
11 renewed confidence that the NRC valued their input and
12 participation.

13 As to lessons learned: Although published in the
14 Federal Register four to six weeks prior to the meetings,
15 some participants did not become aware of the meeting until
16 shortly before the date of the workshops. We are now far
17 more aggressive in noticing these types of meetings, and I
18 will describe later what the current process is.

19 Slide 6.

20 The Commission has approved a proposed revision of
21 Part 70 to risk-inform the rule to an integrated safety
22 assessment process. The public comment period on this
23 proposed rule, I note, closed October 13th of this year.

24 This ongoing proposed rule change has involved
25 heavy public participation, particularly on the part of the

1 industry. All important documents and significant drafts of
2 selected documents were posted on a website.

3 These postings include draft rule language,
4 revisions to draft rule language, Standard Review Plan
5 language, Staff comments on related issues, postings of
6 comments received, and postings of the transcripts of public
7 meetings.

8 All known interested or potentially interested
9 parties were notified by e-mail when a new document was
10 added to the site or when a public meeting was schedule.

11 There were three public meetings between December,
12 1998, and March 1999. Of course, the Federal Register was
13 used to request comments on a specific number of areas for
14 the proposed rule.

15 Slide 7.

16 We believe these actions were very effective and
17 led to the progress that was made on the rule after several
18 poor starts on this rule over a number of years. Several
19 rounds of two-way communication were needed, many times, to
20 clarify an issue.

21 This approach to drafting this rule, I believe,
22 led to the success to date.

23 Improvements were made to the website as a result
24 of early communication problems. Resource costs in time for
25 meeting preparation and for analyzing and communicating the

1 results of these meetings were not properly planned for, we
2 determined later.

3 Slide 8.

4 Outreach for Part 63 has been NMSS's most
5 resource-intensive effort to date. The slide shows the
6 scope of these efforts. The include, today, five public
7 meetings, and there are additional ones that are being
8 planned.

9 In addition to the official Federal Register
10 Notice, we contacted state, county, and tribal
11 representatives directly. We posted announcements at the
12 meeting locations in Nevada where these meetings were held
13 in advance.

14 We met with the press before the meetings, and ran
15 newspaper ads two weeks before the meetings. We, of course,
16 listed the meetings on our website.

17 Comment forms were provided to the audience to be
18 mailed after the meeting, and we developed a list of
19 participants that wanted copies of the transcripts.

20 I believe we were effective in reaching people
21 that were directly impacted and interested in this issue.

22 Slide 9.

23 Although not directly related to the Part 63
24 rulemaking, I want to note the use of video teleconferencing
25 between the NRC and DOE in Nevada, and Headquarters, for

1 routine, essentially monthly data exchanges.

2 The State of Nevada participates in these calls by
3 essentially being in the DOE video teleconferencing center
4 in Nevada.

5 I believe that this technology has applicability
6 to future outreach efforts.

7 We've also learned the need to provide the Staff
8 with communications training. Feedback from the first round
9 of meetings by our own Public Affairs people, as well as
10 others, was that the answers were too long, too technical,
11 and we had too many NRC representatives answering the same
12 question.

13 Feedback after the second round of meetings--and
14 it was at this point that we were providing training,
15 communications training to the Staff the day before they
16 went out to conduct these meetings--the feedback was much
17 more positive.

18 The Staff was complimented on the clarity of the
19 presentations, and the Staff's willingness to respond to
20 questions and come into the various communities to discuss
21 issues of concern to the people in the local communities.

22 Another major accomplishment was the fact that it
23 became clear that the public understood the difference
24 between the NRC and the DOE roles in the high-level waste
25 site at Yucca Mountain.

1 Slide 10?

2 Development of a Decommissioning Standard Review
3 Plan, and a more realistic decommissioning dose modeling
4 guidance is another Staff activity directed by an SRM. This
5 is ongoing, and probably represents the current technical
6 state of stakeholder dialogue.

7 The web is used to post documents. In this, it
8 includes the initial Standard Review Plan, Draft Standard
9 Review Plan. One can submit comments and questions by way
10 of the web, and public workshops are held to discuss
11 specific topics.

12 This Part 70 activity and high level waste
13 activity are examples of NMSS's highest level of public
14 interaction, combining, in addition to the traditional
15 communication through the Federal Register, Internet
16 communication and public meetings.

17 Information is communicated before meetings,
18 continually received during and after the meetings.

19 Slide 11.

20 Time does not permit to discuss other areas where
21 there has been stakeholder interaction, such as Part 35,
22 Uranium Recovery, and West Valley, nor the development of
23 Standard Review Plans over the past five years for all the
24 activities regulated by NMSS. These have been published in
25 draft for comment.

1 In addition to areas already discussed, major
2 areas that are now encompassed by Standard Review Plans
3 include recertification of the gaseous diffusion plants.
4 We're developing a licensing guide for a MOX facility, and
5 the approximately 26 Licensing Guides include encompassing
6 the Materials Program that we share with the Agreement
7 States.

8 In this latter case, there has been an Agreement
9 State representative on just about all of the writing teams.

10 Communication initiatives have produced changes, I
11 believe, in the Staff approach to many of the issues.

12 All the activities I discussed today were
13 influenced in many different ways. It also has to be noted
14 that various stakeholders may have mutually-exclusive views
15 on an issue.

16 Some stakeholders say, well, we made our comments,
17 but you didn't change the rule or change what you were going
18 to do in reaction to our comments. Well, in some cases,
19 we've had diametrically opposed comments.

20 How the Staff communicates continues to evolve.
21 Technological changes in communication will continue to
22 influence how we communicate with stakeholders.

23 In addition to traditional methods of
24 communication by Federal Register Notice, paper draft
25 documents, and public meetings, we now have Internet

1 communications, web postings, and e-mail.

2 Additional changes may occur from the shift to an
3 electronic recordkeeping environment in the NRC. Video
4 teleconferencing and Internet media streaming may lead to
5 enhanced public participation at public meetings.

6 We have learned that how we do outreach is
7 important. We have found that we have to use old and new
8 technologies. We have to aggressively advertise public
9 meetings.

10 Although the Internet and the Web allow us to make
11 a lot of information widely available, the Internet may not
12 be widely used in some communities. Personal interactions
13 are important. Along with hardware, we have to consider
14 people.

15 This last year we have been concentrating on
16 giving the Staff training in communications just prior to
17 conducting public meetings. This is an area that requires
18 much more additional effort.

19 I believe that having raised, significantly
20 raised, the quantity of our stakeholder interactions,
21 priority now needs to be given to raising the quality.

22 Lastly we have to consider resources expended in
23 these efforts. We need to be aware that with limited
24 resource base there is going to be a tradeoff on the number
25 and timeliness of rulemaking completions and the number and

1 depth of stakeholder interactions. This is an optimization
2 problem in order to achieve our goals of safety, public
3 confidence and efficiency and effectiveness.

4 Now I am going to note just for Fiscal Year 2000
5 we have increased by eight FTE in NMSS the number of Staff
6 devoted to rulemaking with a split between what is needed
7 for actually writing the rules in stakeholder interactions
8 and for risk informing the rules to meet our goal of making
9 our goals more risk effective.

10 I now look forward to hearing from our
11 stakeholders. Thank you.

12 COMMISSIONER MERRIFIELD: Mr. Chairman, if I may,
13 if you will bear with me for one second --

14 CHAIRMAN MESERVE: Yes.

15 COMMISSIONER MERRIFIELD: -- I want to briefly
16 expand on something that Carl alluded to. We are in the
17 midst of an initiative right now to undertake video
18 streaming on the Internet of our Commission meetings,
19 presumably meetings such as our next meeting could be
20 videostreamed on the Internet as well as a host of other
21 meetings we have with the public here in White Flint, and I
22 think this will dramatically increase our ability to reach
23 out to stakeholders to see how we are acting as an agency.

24 Our CIO has this effort underway. It should be
25 fully developed within the next few months and certainly I

1 think many of us are looking forward to providing that
2 enhanced opportunity for public understanding of our
3 actions. Thank you.

4 CHAIRMAN MESERVE: I would like to now walk around
5 the table and allow each of our other participants an
6 opportunity to provide an opening statement. Before I do
7 that, however, I ought to introduce two other NRC, important
8 NRC Staff members who are at the table and who I hope will,
9 as we get into our discussion, will participate, and they
10 are Bill Travers, who is the Executive Director of
11 Operations at the end, and Bill Kane, who is the Director
12 for NMSS.

13 I am just going to arbitrarily sort of circle the
14 table, and why don't I start to my left your right, and Roy
15 Brown I will call on now to give an opening statement.

16 Roy is the Director for Regulatory Compliance with
17 Mallinkrodt, Incorporated.

18 MR. BROWN: Thank you, Mr. Chairman.

19 First of all, I would like to thank the Commission
20 and Staff for allowing me the opportunity to come here today
21 and talk to you. I appreciate Carl's comments. Just a very
22 general comment.

23 We feel that the process NRC has been going
24 through for enhanced participatory rulemaking and for
25 involving the public and the stakeholders has been very,

1 very good.

2 The process has been excellent. I'll have some
3 more specific comments later on areas we feel improvements
4 can be made and where we feel maybe the process has fallen a
5 little bit short, but I appreciate the opportunity to be
6 here today.

7 CHAIRMAN MESERVE: Okay. Robert Holden is going
8 to be with us I understand a little bit later. We will pass
9 by him.

10 Our next participant is Dr. Joseph Ring. He is a
11 Radiation Safety Officer with Harvard University.

12 DR. RING: I would really like to thank you all
13 for the opportunity to come here to speak about the issues.
14 You don't want me to speak about this now, but they are
15 putting up the slide, right?

16 CHAIRMAN MESERVE: They are putting up all the
17 slides. I think the thought was we would ask each of you to
18 make your opening comments and then you'll come back to this
19 with the idea that if the slides are the vehicle you would
20 like to use for making your comments then please go ahead
21 and use them.

22 DR. RING: All right. One of the things that I
23 found, having worked with NRC over the years -- I am now in
24 an Agreement State -- I am active with the NRC on other
25 issues such as the clearance guidance that you were just

1 working with.

2 Really I find that communication is very
3 important. However, bad communication really leads to
4 distrust and misunderstanding and I think you have got that
5 component on both sides, and I am going to try to give you
6 an example that you all delivered to me this morning.

7 I followed the instructions on the building as I
8 tried to walk in here this morning, and I followed the
9 instructions to the auditorium and there was no door that
10 was open, so I went to the security guards and I asked them
11 how to get to the auditorium, and they looked and they said,
12 well, where are you going? The auditorium? I said, well, I
13 would like to go to the auditorium. Well, there is a sign
14 out there that says go this way, and they said, yeah, the
15 sign is there but it doesn't mean anything. You have to go
16 around back. That is people feel when trying to work with
17 the NRC.

18 You really are doing the right thing. You are
19 saying the right things. You really want to do it, but when
20 you try to work with the NRC it becomes difficult for many
21 people because they don't understand. Really what people
22 have said to me when I have gone out and asked them for
23 their comments is that the NRC is very process oriented,
24 legalistic and reluctant to communicate about the issues
25 when they have the opportunity.

1 When it comes to things that the Commission asks
2 to implement, which are usually done with very good
3 intentions, they get implemented inconsistently so that the
4 licensees feel uncomfortable trying to work with the NRC.
5 This leads to people feeling that you all don't hear what
6 they have asked for, which is difficult, which goes back to
7 feed the cycle.

8 Now having made those observations, I want to
9 impress that it is really not as bad as one can take it from
10 that. The recommendations I would like to make is that you
11 all consider push-out technology.

12 Take advantage of the web systems. Many of the
13 byproduct licensees are quite disappointed that you dropped
14 your list servers because now the only way they can get
15 information is to go back to the Federal Registers, which
16 means going to the libraries, which means that they don't
17 get the information until after your public comment period
18 has expired.

19 We suggest you take a look at putting multiple
20 list servers out there so that people can get on a list
21 server that is appropriate for them so that you can get the
22 information out to them. It has got to be cheaper than
23 going to the paper route that you have converted your list
24 servers to.

25 The web system is great. There is a lot of

1 information there, but if you don't understand the web
2 system it is awful hard to find things. I was looking for
3 something on it the other day for the clearance guidance. I
4 even used a search engine and I couldn't find it. However,
5 I found a listing to something that went to a different
6 website and it was actually on the different website, so it
7 is difficult to follow your web because the information is
8 there but it is difficult to follow the information because
9 it is not presented in a user format. It is presented from
10 an insider's format.

11 One thing the people feel is that the NRC does not
12 respond to the comments very well. They think that the
13 information that they have provided as comments disappears
14 and doesn't come back out, and so they are saying, well, if
15 that is what is going to happen, why am I going to comment?

16 They would like to see some kind of a method to
17 say this is how we have addressed your issue. I have heard
18 it already mentioned that when you have a diametrically
19 opposed answer that you didn't address their issues, and
20 that is certainly acceptable, however when people don't know
21 that you didn't accept it for that reason they think you
22 ignored them.

23 The regional meetings and facilitated meetings
24 work great. People like those. One thing that may be
25 suggested is especially in the early stages to have more

1 localized discussions, have work groups so that people can
2 have a communication. In the clearance enhanced rulemaking
3 process people didn't realize until the end of the two-day
4 seminar they were talking about the same things and when
5 they finally started to communicate effectively about it,
6 they said, oh, yeah, the things I was complaining about
7 yesterday I understand now and they are not the same thing.
8 We are talking about the same issues. We all could have
9 gotten better communication by doing a work group a day and
10 a half earlier and then had another day and a half to
11 actually work on the issues that you are interested in us
12 helping you with.

13 You have to be able to acknowledge difference of
14 opinions. People out there feel that when something is said
15 that -- let's say a member of the public or a licensee makes
16 a comment that isn't necessarily true, people feel that the
17 NRC doesn't respond to that. They just let it go, and when
18 people have a difference of opinion people think that the
19 NRC just leaves it. You need to say, well, we don't see it
20 that way -- we see it this way, which goes back to your
21 diametrically opposed comments.

22 I really appreciate the request that you all have
23 made to ask us for comments. We think you are really
24 interested in doing it. We think that with some refinement
25 the instructions that you as Commissioners send to your

1 staff and that we ultimately hear as interested parties, we
2 think we can harmonize those. Thank you all.

3 CHAIRMAN MESERVE: Thank you very much.

4 Roy, I think you intended to say more than you did
5 initially?

6 MR. BROWN: Yes, opening remarks -- I had a full
7 five minutes of commentary too, so I will go ahead and start
8 on that.

9 Let me go back and reintroduce myself. I am
10 Director of Regulatory Compliance for Mallinckrodt,
11 Incorporated, based in St. Louis. Mallinckrodt is a
12 manufacturer of radiopharmaceuticals. I am here today to
13 also present comments on behalf of the Council on
14 Radionuclides and Radiopharmaceuticals or CORAR. CORAR is a
15 trade association representing the manufacturers of
16 radiopharmaceuticals and manufacturers of radionuclides for
17 use in medicine and biomedical research.

18 Let me start off with a general comment about
19 stakeholder involvement. I think stakeholder involvement
20 very much encourages good rulemaking. It provides an
21 opportunity for expert advice from the industry.

22 What we will typically do in enhanced
23 participatory rulemaking and in all rulemaking where we get
24 a chance to, all the stakeholders to interact, we will quite
25 often bring in practicing physicians, clinical physicians

1 that practice nuclear medicine every day of their career.
2 We also bring in from the manufacturers people that handle
3 tens of thousands of curies of unsealed radioactivity on a
4 daily basis, so we have experts coming in offering advice on
5 rulemaking or ways to address rulemaking and quite often
6 there is a great deal of experience in the room and that is
7 why we like the stakeholder involvement. It gets the people
8 to really use the material out in front of the Staff, out in
9 front of the Commissioners.

10 Also, we feel it is very important to provide an
11 opportunity for the environmental community. They also are
12 a stakeholder. They also have very valid concerns just as
13 industry does. We also feel it is very important that all
14 the players are at the table. Any time you have a
15 stakeholders' meeting it is important for the industry and
16 members of the public and environmental interests to be
17 there as well.

18 Going back to my earlier general comment on the
19 NRC's process, the NRC's process is very, very good. In the
20 last several years the process of enhanced participatory
21 rulemaking and stakeholder involvement is a very good
22 process.

23 We do have some concerns because we feel like the
24 process is good but sometimes the results fall a little bit
25 short of where we would like things to be. The facilitated

1 meetings seek to get input from all, and that is a very good
2 and honorable process and a goal.

3 We feel the NMSS Staff with Carl and Bill Kane is
4 very good. There are quite a few experts within NRC that
5 understand our industry very well, understand the
6 manufacturing process very well, but once again the experts
7 we bring in are clinical physicians. They are people that
8 work with tens of thousands of curies at a time. We have
9 experts in the field and quite often we feel that the
10 experts may even know more than the Staff in these certain
11 circumstances, so we value their opinion. We think they
12 have some very good advice to give to the Staff and to the
13 Commission.

14 Quite often when we bring the experts in to
15 testify or participate in the stakeholder meetings we feel
16 that their comments are not always taken into consideration.
17 We understand that there will be a difference of opinion and
18 the Staff and the Commissioners will differently than the
19 licensee will feel, but if we would like our comments
20 explained or for some reason our comments are not
21 incorporated into the rulemaking it would be nice to know
22 why they weren't or the rationale the Staff used to discount
23 our comments.

24 The trouble is when you take the time and the
25 effort to prepare these comments and participate in this

1 process it gets discouraging if you feel like you
2 participate and then at the end of the day you look at the
3 final result in the rulemaking and there is no evidence of
4 your input.

5 Also, in conversations with the ACMUI there seems
6 to be some frustration there too, where they feel like
7 recommendations are made quite often to the Staff and the
8 Staff accepts the recommendations of the ACMUI but for some
9 reason they don't make it into the final rule, and the
10 members of the ACMUI that I have talked to feel like quite
11 often it is the Commissioners that put up a roadblock to
12 some of the suggestions they make.

13 Also, I just wanted to mention a few of the
14 enhanced participatory rulemakings our industry, the
15 manufacturers of radiopharmaceuticals and medical
16 radionuclides, have participated in the last few years, and
17 a little bit of the frustration with these.

18 I realize this is going way back, but in the late
19 '80s we were involved in the Price-Andersen effort. There
20 was some concern on the part of manufacturers because we
21 were unable to get commercial insurance for our facilities
22 and at the time there was some reauthorization of
23 Price-Andersen going on. We paraded in a whole army of
24 insurance specialists saying that, yes, we are not willing
25 to write you a commercial policy to ensure your plants. We

1 thought we presented a very credible case, but then we were
2 very disappointed when the NRC decided not to include our
3 types of facilities in Price-Andersen.

4 We were very involved in the strategic assessment
5 of rebaselining initiative from 1996 to 1997. Our industry
6 was involved in each one of the public workshops,
7 participating in each one fully. We made what we thought
8 were good suggestions, good recommendations to the
9 Commission and were once again disappointed that that effort
10 didn't go further and didn't incorporate our comments and we
11 had no explanation why those weren't incorporated.

12 Lastly, our Part 35, which is an ongoing process
13 as you know, we have been very active in that as well for
14 the last few years. Once again we are presenting comments
15 and we feel like they are not always being fully
16 incorporated and we are not getting good explanation why
17 those aren't being incorporated.

18 As I said before, most of these discussions have
19 been very beneficial. They involve many, many stakeholders,
20 which is a good process. Once again I want to point out
21 that we feel the process is good. We are just concerned
22 about the results falling a little bit short of our
23 expectations. Thank you.

24 CHAIRMAN MESERVE: Thank you. Let me turn now to
25 Ms. Elsa Nimmo, who is a radiation safety officer with

1 Honeywell Measurex.

2 MS. NIMMO: Thank you. I'm going to start off by
3 telling you a little bit about my company. We're probably a
4 bit different than the other people represented around the
5 table. We're a manufacturer of generally licensed devices.

6 COMMISSIONER MERRIFIELD: You actually probably
7 need to pull that microphone -- the whole base closer to you
8 so it's a little closer to your mouth.

9 MS. NIMMO: Better?

10 We have facilities scattered around the world,
11 with some in North America and some in Europe as a sideshow.
12 I work as a radiation safety officer at the historic
13 headquarters for my company, which is in Cupertino,
14 California.

15 If I could have the second slide.

16 I should back up and say some of these slides
17 you'll notice are labeled Measurex. Others are labeled
18 Honeywell Measurex. We were -- we are one of the companies
19 that's recently been in a merger. Probably throughout the
20 presentation I will talk more about Measurex just to shorten
21 this.

22 We build -- we manufacture gauging devices that
23 are used in the flat sheet industry. And I want to tell a
24 little more about that.

25 A typical Measurex system includes a whole number

1 of sensors that scan across a sheet as that sheet is being
2 produced, say it might be paper. So a paper mill would buy
3 a gauge that Measurex has manufactured and uses that gauge
4 in their process control to control different variables,
5 maybe the color of the paper, the gloss, the strength.

6 One of the most fundamental measurements is the
7 weight per unit area, or the thickness of that sheet. And
8 that measurement is usually made using a radiation beam.
9 That weight sensor is only one very tiny piece of a rather
10 large, complicated computer base system. Without that
11 weight sensor, we really wouldn't have a product. And I
12 don't think we or our competitors would exist if we couldn't
13 make that measurement.

14 I'm a radiation safety officer, and I very much
15 enjoy working for my company, but I'd probably be the first
16 to counsel my company if they had a way not to use
17 radioactive materials in their devices, that they should go
18 for it. The truth is, to make that particular weight per
19 unit area measurement, my company and our competitors have
20 spent quite a bit of time looking at alternatives. You can
21 think of other forms of electromagnetic radiation that might
22 work. But as it turns out, most of those alternate
23 technologies aren't particularly good for making that
24 measurement. They simply can't do it with nearly the
25 accuracy, particularly when you're talking about making

1 measurements on a product where the chemical composition is
2 not fixed, as in paper, aluminum, other sheet processes.

3 So as it goes we are stuck with using radioactive
4 material to make this measurement. Our customers, the paper
5 mills, the aluminum mills, plastic sheet production
6 facilities, use it to, as I said, do quality control, live
7 time, as they're producing whatever their product, their
8 sheet product is, and in the end it ends up minimizing their
9 use of the raw materials for the paper plant. It might be
10 something like 5 percent annually reduction in need for wood
11 pulp. It also ends up reducing their energy. It reduces
12 the time they spend making inspect product.

13 I'm not a salesman, but I think we have a really
14 good product, and I think it's something that is worth
15 manufacturing.

16 Now to the point of our meeting today,
17 interactions with the NRC. I want to start by saying we
18 distribute throughout the world and throughout the United
19 States, and we've distributed at this point to about 46 --
20 we've distributed sensors that contain radioactive sources
21 to about 46 of the 50 States. Thirty of those States are
22 now Agreement States, and 16 of the States are not. In
23 addition, once we've sold the equipment, we have employees
24 that work in all of those States doing the installations of
25 the devices, then doing the ongoing testing of the devices,

1 and on a daily basis maintaining the devices so that they
2 make the measurements that they're designed to do.

3 I have to say the single biggest frustration of my
4 career in working in radiation safety is the huge fraction
5 of the radiation safety time that's put into not improving
6 safety but coping with the variations in regulations between
7 the NRC and the Agreement States. This is really costly.
8 It's nonproductive. It confuses our customers, confuses our
9 employees, and it in no way promotes safety.

10 Whenever the NRC comes up with a meeting to
11 consider new regulations that's going to affect us or affect
12 our customers, we make the effort to participate and speak
13 up about our concerns. Now we're located on the west coast,
14 so it's not -- this doesn't come easy, but we think it's
15 important.

16 One of the major themes of our comments invariably
17 is please, NRC, as you're setting these new regulations,
18 consider the need to sight your compatibility requirements
19 high. In other words, consider the need to set the
20 regulations up in a way that when the Agreement States are
21 looking at them, they would be asked to adopt essentially
22 the same language in those.

23 We very much hope that that concern is heard. The
24 increasing consistency is really burdensome. So far I guess
25 my impression is NRC is extremely good about soliciting our

1 comments and asking us to give them feedback, but our second
2 conclusion is if we propose something that flies in the face
3 of the States' individual desire for maximum freedom, our
4 concern is not really terribly likely to be heard or acted
5 upon. I hope I'm wrong in that assessment, but that is our
6 impression to date.

7 So I'm stating some doubts about whether a certain
8 type of input actually can be heard. And maybe it's, as my
9 colleagues have mentioned around the table, maybe our
10 concern is being heard, but in the feedback from the NRC,
11 we're not hearing okay, we've looked at both Agreement State
12 input and manufacturer input, and we have to go with one of
13 these two opinions, and here's how we're going to go.

14 I guess the other concern I have is as the NRC
15 allows States to become Agreement States, they do ask for
16 compatibility in certain areas, but as far as asking the
17 States to allow stakeholders to have input into regulations,
18 the NRC doesn't seem to ask that of States. The States in
19 my experience tend not to have widely publicly announced
20 meetings or mailing lists or anything to tell the regulated
21 community when they're considering new rules.

22 A lot of us put in a great deal of effort trying
23 to find out when the Agreement States are considering
24 changing rules. But even so, we're constantly surprised by
25 rules that are -- we learn about after they've been adopted.

1 In some cases we find that the rules have consequences that
2 the Agreement States didn't expect or realize. Then we have
3 to go back and ask for an exception. We think it would be
4 much better if the NRC in looking for compatibility would
5 also ask the Agreement States to have compatible processes
6 so that people who are going to be affected by regulations
7 would have the chance to interact.

8 Thank you.

9 CHAIRMAN MESERVE: Thank you.

10 Purely by accident our next speaker is
11 Roland Fletcher, who is here representing the Organization
12 of Agreement States.

13 In his ordinary job, he is with the Maryland
14 Department of the Environment.

15 MR. FLETCHER: This morning I, as I looked at the
16 topic and I listened to some of the comments, was very
17 pleased to hear during Carl's presentation the mention of
18 Agreement State involvement in many of the areas in
19 rulemaking and in working groups, and that's a very positive
20 step, and Carl will admit that 5 years ago you wouldn't have
21 heard the Agreement States mentioned, I don't think, that
22 frequently. So I think that's a step in the right
23 direction.

24 When we talk about the interaction of Agreement
25 States and the NRC, particularly looking at the Agreement

1 States as stakeholders, I think we fall somewhere between
2 rare and very well done. And some of the things that we
3 have been engaged in jointly I think have been very well
4 done. There are many other things that require a great deal
5 more work.

6 But let's begin. I don't assume that everybody
7 knows exactly what an Agreement State is and how the
8 relationship evolved, so I'm going to take a moment just to
9 go back a little bit to point out first of all that the
10 Agreement States and the NRC essentially sprang from the
11 same basic act or rule or foundation of authority, and that
12 of course is the Atomic Energy Act of 1954. By the way,
13 Microsoft Word is highly overrated as far as its spell check
14 is concerned.

15 Based upon an amendment in 1959 called Cooperation
16 with States, section 274, provision was made in that law to
17 transfer -- and that's an interesting word when you start
18 talking about rules -- transfer authority from the then
19 Atomic Energy Commission to certain States which met certain
20 qualifications. And that essentially meant that Federal
21 authority for those items was discontinued in those States.
22 Of course, this was appealing to many of the Agreement
23 States, because first of all this gave us new regulatory
24 authority, and you have to remember the time. I mean, this
25 is the late fifties, early sixties, when we were just

1 beginning to realize that the whole area of radiation, which
2 was as mysterious then as it is in some cases now, was
3 something that we could start having some rules and
4 regulations on. So it was appealing.

5 States had already begun to have some regulatory
6 authority over something which you whisper in this building
7 called NARM, and there was a lot of radium that had to be
8 dealt with. And they also had regulatory authority over X
9 ray. There was valuable training that could be obtained,
10 and this of course was very appealing as the staffs were
11 being developed and qualified to perform this job. So our
12 initial interaction as between Federal and State programs I
13 think was very good and very positive, and the first
14 Agreement State was Kentucky in 1962.

15 About 15, 16 years after that, there was another
16 amendment to the act where AEC became the NRC, and program
17 evaluations began, the Office of State Programs began, and
18 there was a little more concern about what's going on in
19 these State programs. Maybe not so much from the State
20 perspective, but from the NRC perspective.

21 Now I believe that we over the next 20 or so years
22 have developed a relationship that demonstrates some mutual
23 respect and responsibility that I think can grow even
24 further, because we began having annual meetings. We
25 established what's called the Organization of Agreement

1 States. There began to be interactions, Commission
2 briefings, staff meetings, staff directives based upon
3 working groups that were established, joint committees.
4 Agreement State members have been encouraged to participate
5 to the degree they can in many of the rulemakings that have
6 taken place.

7 Now that is not to say that everything is, you
8 know, peaches and cream, but as we stand here now, many of
9 the rules and many of the directions that the NRC is going
10 in have had involvement from Agreement State
11 representatives.

12 One of the best things we've done is the
13 establishment of the IMPEP and MRB system whereby the
14 materials programs are evaluated by teams of evaluators that
15 include Agreement State representation, and the final result
16 is reviewed by a management group also including an
17 Agreement State representative giving some additional
18 feedback to the process. And as of August 31, I believe
19 that the date is correct, we now have 31 Agreement States,
20 which means as far as the materials licensing is concerned,
21 we license about 70 percent of the materials licenses in the
22 country. And therefore we from that perspective license
23 many of the same organizations that the NRC does inside the
24 States. So that stakeholder relationship once again is
25 somewhat different from a licensee perspective.

1 There are a lot of current issues, but we do enjoy
2 a better and more frequent communication. My e-mail is
3 always full of information requests, working group requests,
4 information being transmitted. It works very well.

5 We still have a lot of States who have come to
6 depend on sponsor training who aren't getting it, and we
7 feel that this is going to have a long-term negative effect.

8 There's still a controversy about some of the
9 earlier terminated licenses that are on the SDMP list, but
10 that's another -- that's for another discussion. Regulation
11 of DOE, these are some joint concerns that we are in
12 dialogue with as far as the need for rulemakings.

13 The generally licensed device situation Carl
14 mentioned earlier, we are continuing to encourage our
15 membership to participate in work groups that can lead to
16 and often do lead to rulemakings, and it's been successful.
17 It can be more successful with more participation.

18 One of the best things we do together is that we
19 jointly have monthly teleconferences to discuss any current
20 item, any area of concern that might be ongoing.

21 My prognosis for the future is that as long as we
22 continue to communicate and improve those methods of
23 communicating, and if we work together to permit the
24 earliest possible incorporation of Agreement State
25 perspectives in developing rulemaking, radiation safety

1 regulation will be headed in a positive direction.

2 Thank you.

3 CHAIRMAN MESERVE: Thank you.

4 Our next presentation is by Mr. Peter Hernandez,
5 who's vice-president for employee relations with the
6 American Iron and Steel Institute.

7 MR. HERNANDEZ: Thank you, Chairman Meserve.

8 American Iron and Steel Institute is a trade
9 association that was founded about 100 years ago and
10 represents the basic steel producers in North America. Our
11 U.S. members account for about two-thirds of the 100 million
12 tons of steel that's produced annually in the United States
13 and employ about 125,000 in their operations. We represent
14 both integrated steel producers as well as electric arc
15 furnace producers, and in fact about a fourth of our
16 membership today represents small business, as categorized
17 by the SBA. That is, they have fewer than 1,000 employees
18 in their operations.

19 Our members are also licensees of the NRC, both
20 specific and general licensees. And our first involvement,
21 however, as an association with the NRC was when we were
22 invited to participate on the NRC's working group on orphan
23 sources in 1995. The group was created in response to the
24 pleas of a sister association called the Steel Manufacturers
25 Association, which represents primarily or only electric

1 furnace producers, although together we represent 100
2 percent of the U.S. steel production, several of whose
3 members had actually melted some radioactive sources that
4 cost their members between \$9 million to 24 million dollars
5 to clean.

6 Prior to 1995 my experience in Federal rulemaking
7 had been limited to the Labor Department, OSHA primarily,
8 and EPA, and so I wasn't quite sure what to expect at NRC.
9 And while the process in this particular rulemaking isn't
10 complete, I personally and our members were quite pleased
11 with the Commission's response to the significant problem
12 and risk that was created by these orphan sources.

13 Compared to OSHA, NRC's rulemaking, at least the
14 first step, took about four years, which is about half to a
15 third the time, and it is a step in the right direction.

16 As with any large organization, staff at NRC is
17 often reluctant to change the status quo, and it's really
18 had to be driven by the Commissioners, who recognized the
19 existence of a serious problem and decided that corrections
20 were needed, and we are appreciative of that.

21 Our second involvement with NRC has come as a
22 result of its clearance limit rulemaking, which is -- it's
23 in the midst of today. The current effort to seek public
24 input in developing uniform Federal regulations for free
25 release of radioactively contaminated material from DOE in

1 nuclear fuel production sites is also an issue that's of
2 great concern to our members. We were disappointed that we
3 weren't consulted at an earlier stage in this rulemaking
4 effort, because the action that the NRC is proposing to
5 undertake could have serious unintended consequences for the
6 metals markets, not only steel but other metals as well.

7 In 1998 steel product sales in the United States
8 amounted to about \$40 billion. Steel products are
9 ubiquitous, although not generally given much conscious
10 consideration by the public. If you look around you, the
11 infrastructure, your vehicles, appliances, tools, homes,
12 food containers, toys, medical devices, et cetera, have
13 steel as a major if not only component.

14 And so if just one percent of the steel industry's
15 sales would be lost due to a negative public reaction, the
16 impact on the steel industry, on employment in the industry
17 and on jobs of a \$400 million loss in sales would not be
18 insignificant.

19 We understand that some Staff at NRC do not
20 believe that the Commission is required to give serious
21 consideration of the economic impact that would flow from
22 its decision, because it doesn't believe it's directly
23 related to public health.

24 But we would hope that the Commissioners--and
25 we're guardedly optimistic that the Commissioners will take

1 a broader view of this particular issue.

2 We commend the NRC for reaching out to
3 stakeholders, and we respectfully urge the Commission to
4 continue to provide the stakeholders with an opportunity for
5 continued participation as this rule and others are
6 developed. Thank you.

7 CHAIRMAN MESERVE: Thank you. I'd like to turn to
8 Mr. Kevin Kamps now. Mr. Kamps is with NIRS, the Nuclear
9 Information and Resource Service.

10 What we're trying to do now--I realize you've just
11 arrived--we've been walking around the table with various of
12 the non-Commission individuals, and have been asking that
13 they focus their comments on the kinds of interactions
14 they've had with the NRC, and in particular, how the NRC
15 could improve its processes for communications.

16 We're really trying not to get into the substance
17 of the various rulemaking activities today, but we're trying
18 to get comments on how we could improve our means for
19 getting involvement by the licensees and the greater public.

20 MR. KAMPS: First, I'd like to apologize for
21 arriving late. I don't know what to say, and I'm sorry that
22 I missed some presentations already.

23 I'm thankful to have gotten here at all. I had
24 car trouble coming up here, and luckily got some help to get
25 going again, so I'm glad to be here.

1 Thank you for the invitation to our organization
2 to speak here. Diane D'Arrigo from Nuclear Information and
3 Resource Service was originally invited, and was called away
4 to a conference in Germany, so I'm happy to be here in her
5 place.

6 Just to get back to what you just said about, you
7 know, not getting into the substance, but commenting more on
8 how interactions can be improved, it's very difficult to
9 separate the two, from our perspective.

10 We represent people that live near nuclear power
11 plants and radioactive waste facilities across the United
12 States, and there's a growing feeling among concerned
13 citizens and public interest organizations and environmental
14 groups across the country that they are being effectively
15 locked out of meaningful participation decisions that the
16 NRC is making.

17 And these range from dry cask storage decisions to
18 decommissioning, to high level radioactive waste disposal,
19 to the proposed release of radioactively contaminated
20 materials that was just spoken about.

21 Some of examples of these things: At the
22 Palisades Nuclear Plant in Michigan--I'm from Michigan, and,
23 just recently moved to Washington to work with NIRS. I,
24 myself, and many of my friends and fellow concerned citizens
25 in Michigan were involved in trying to make sure that the

1 loading of casks at Palisades Nuclear Plant took place in a
2 safe way.

3 And we felt very locked out of that process
4 throughout. When Palisades was granted the ability to
5 proceed without hearings, that effectively gutted any
6 meaningful public involvement in the process.

7 And this interaction has continued to the present.
8 The NRC has had public meetings at Palisades in regards to
9 problems with the dry casks, but these meetings are really
10 token exercises at pacifying citizen concern. There is
11 really no meaningful way for the public to be involved in
12 decisions about the dry casks of Palisades.

13 Another example is decommissioning. Again,
14 there's no public hearings available.

15 At the Big Rock plant in Michigan, there was a
16 public meeting where the NRC listened to public concerns,
17 but really the green light was given to proceed with an
18 immediate dismantlement of the plant.

19 And there is no effective way for the public to
20 register its concerns that have any teeth in affecting
21 decisions that are taking place.

22 Another example: In the early 1990s,
23 environmental groups, public interest organizations, and
24 Native American tribes, entered into a negotiated regulatory
25 rulemaking process with the NRC, about the flow of

1 information to the public concerning disposal of high level
2 waste at Yucca Mountain, Nevada.

3 Meetings were held every few months over a
4 couple-year period, and the negotiated regulatory rule was
5 published in the Federal Register.

6 But this rule was subsequently rejected by NRC and
7 replaced with, in the eyes of the public, a worse rule that
8 had never been brought to the table during the participatory
9 process.

10 And the organizations felt betrayed, and these
11 public groups refused to participate any longer, and the
12 process fell apart.

13 And this isn't a very good basis for public trust
14 as the NRC enters into the Yucca Mountain licensing process
15 at the present time.

16 Unfortunately, this pattern has continued up to
17 today. It's interesting to note the connection between the
18 enhanced participatory rulemaking on residual radioactivity
19 in 1993, which led to NRC's '97 decommissioning rule, and
20 the NRC's present attempt at consensus-building on
21 radioactive release rules.

22 The NRC's '97 decommissioning rule really gutted
23 meaningful citizen advisory groups, allows for the same or
24 higher exposure to radiation from a closed facility than
25 from an operating nuclear power plant, and doesn't protect

1 groundwater to EPA standards.

2 And so in the eyes of concerned citizens and
3 public interest groups, and environmental organizations,
4 this is much worse, again, than anything that the NRC
5 brought to the table during the so-called participatory
6 process.

7 To put it simply, the public felt betrayed by the
8 NRC's final decision, and excluded from any effective
9 involvement in the process.

10 Now, the NRC and the same contractor that was
11 involved in the previous effort to build consensus, are
12 again trying to build consensus on a radioactive release
13 rule.

14 But as saying goes, once bitten, twice shy, the
15 public interest and environmental communities have made
16 clear in many ways over many years, that their position on
17 radioactive material release is that the materials must be
18 isolated and not released into the marketplace.

19 The sense that we have is that we're being ignored
20 by the NRC. The three meetings that have taken place to
21 build consensus so far apparently don't present a meaningful
22 option for preventing radioactive release. It seems that
23 that's not under consideration at all.

24 And the clear impression exists that many
25 decisions have already been made by the NRC, so our

1 organizations feel that the exercise would be a token
2 exercise; that it would be chasing after an illusion of
3 public participation, when predetermined decisions have
4 already been made.

5 And for this reason, we recently requested and
6 eight-month extension to the public comment period on the
7 radioactive release scoping process, because we feel that if
8 true public involvement is desired, that it's going to take
9 real public knowledge of the issue, and an opportunity for
10 the public to get involved.

11 And to rush through the scoping procedure is not
12 acceptable.

13 So, in conclusion, speaking for myself and my
14 experience in Michigan with decommissioning and dry cask
15 storage--and I have spoken to a number of people across the
16 country who have been involved in these different issues,
17 and there is really a growing feeling that the NRC's public
18 involvement processes are not legitimate processes.

19 There is a growing concern that at the expense of
20 public health and safety and the environment, and even
21 democracy, that the public is being locked out of
22 decisionmaking processes that affects their lives.

23 So, thank you for this opportunity to speak. I
24 did bring handouts. They're probably out at the back table
25 at this point, if people would like to see further

1 elaborations on these points.

2 CHAIRMAN MESERVE: Thank you very much. I'd like
3 to go slightly out of order now and call on Mr. Robert
4 Holden. I had understood that he had limited time to be
5 with us this morning.

6 He is the Director of the Nuclear Waste Project of
7 the National Congress of American Indians.

8 MR. HOLDEN: I also apologize for being late. I'm
9 serving as Interim Director while our Executive Director is
10 on travel, but I guess I'm late for a lot of things.

11 It reminds me of the doctor that tried to find his
12 patient, and he found his patient and said, well, I have
13 good news and bad news. What do you want to hear first?

14 Well, he said, I want to hear the good news. He
15 said, well, the good news is that you've got 48 hours to
16 live.

17 And he said, well, if that's the good news, what's
18 the bad news? He said, well, I tried to find you yesterday.

19 (Laughter.)

20 MR. HOLDEN: But I appreciate the opportunity to
21 address the Commission and Commissioners here. This is not
22 the first time that the National Congress of American
23 Indians has stood before you.

24 Many years back, when I first came--joined the
25 organization, mid-80s, I sat here and talked with

1 Commissioners regarding issues involving Indian Country and
2 the outreach and communication shortfalls of most of the
3 agencies.

4 Since that time, there has been some progress
5 made, some Staff are aware of tribal nuances of the various
6 issues that are under your jurisdiction.

7 But that is not to say that everything is perfect,
8 and we realize that there is no such thing as a perfect
9 world. Even the Creator made things to keep us on guard and
10 keep us aware of who we are and of human frailties, I think,
11 just in our every-day lives.

12 But in terms of what I'm here to talk to you
13 about, it goes to policy matters, primarily, those things
14 that are guided by not only executive memoranda and
15 executive orders and the legal cases, the treaties that, in
16 essence, brought all of this about.

17 We are Indian Nations. We have different
18 cultures. In our minds, there are two types of lands,
19 Indian Country and bordering Indian Country at this point.

20 These treaties that we sign are significant
21 instruments; we don't take them lightly, and we're taught
22 that these are not relics of the past, that these are not
23 things that went by the wayside, because we still live on
24 those lands and we still have jurisdiction and some degree
25 of autonomy in those lands.

1 We look after the environmental quality, we
2 protect our culture, we protect our resources, we protect
3 our peoples.

4 And we have the downside of the socioeconomic
5 impacts from signing those treaties, so what we lost, we
6 were healthy, we were a strong, viable people at one time,
7 and I regret to say that that's not the case today.

8 And you do hear of some tribes that have done well
9 in economic development, but that's only a handful, that's
10 only a few, and that was very much at great expense in terms
11 of lives lost, in terms of lands lost, in terms of
12 capitulating to state and Federal Governments to set up
13 those enterprises.

14 But these treaties call for a lot of things,
15 primarily a government-to-government relationship, and in
16 this progression of this relationship and what that means to
17 current Administrations.

18 As I said, various administrations have express
19 memoranda stating that, reaffirming that each agency will
20 remove impediments, for instance; that each agency will do
21 its utmost within the extent of the law to reach out and
22 inform, provide notice and consultation to tribal
23 governments on proposed actions that may impact Indian
24 Country.

25 That is not happening, for the most part. Many

1 agencies don't have that type of outreach capability.

2 However, that, in our minds, is not a valid
3 excuse. Those are still legal requirements, those are still
4 things that we interpret today in these things that these
5 treaties call for.

6 For instance, you know, back in those days, since
7 we didn't have our food and medicines and those things that
8 we survived on, the Government provided us. I will say
9 "exchanged," because we gave up those lands--it was quid pro
10 quo: those lands for blankets, beef and the medicines and
11 supplies that would keep us well, keep our people healthy.

12 These days, it amounts to federal program dollars,
13 it amounts to education programs, it amounts to health
14 programs, and it amounts to consultation and providing
15 technical assistance to address and understand those issues
16 which impact our lives to this day.

17 And we don't think those things, the majority of
18 Indian Country does not think that those things are being
19 provided, that trust responsibility is not being adhered to.

20 And as you are well aware, when you talk about
21 trust responsibility and fiduciary obligations, that it's
22 supposed to be pursued with a great degree of diligence.
23 And it's a high degree of protection that's called for in
24 the courts and in this legal system which we are trying to
25 work with.

1 However, we don't see that happening. And I
2 guess, once again, we're subject these days to this Congress
3 and the Administration, OMB, and the dollars that flow from
4 the public domain, but also that does not--should not
5 preclude providing of resources to tribes, because we still
6 have the treaties.

7 The Federal Government still has the lands and the
8 resources, so those treaties are still intact, and that's
9 the basis of what we call for in terms of meeting this trust
10 responsibility.

11 And we also look for some improvement in
12 interaction in this outreach to Indian Tribal Governments.
13 There are protocols that should be set in place.

14 Many of the agencies have set up Indian policies.
15 We've asked several federal agencies and they've sought to
16 provide us with the--some are guidelines, some of more
17 directives in terms of how this process will take place,
18 interaction, outreach, and so forth.

19 So, we're doing much to ask the federal agencies
20 to provide these things for us.

21 But many of the agencies are using--as I said,
22 these are not directives to the extent that they should be;
23 they're just sort of maps as to how to interact and what we
24 expect form this relationship.

25 The oversight that you have on some of the

1 agencies, particularly the Department of Energy, the impacts
2 of those programs that are long-term and that can
3 significantly impact the cultural integrity, or the
4 resources that we have left, and the health impacts.

5 I use the example of if radiation escapes by the
6 side of the road, and it gets into the groundwater, the
7 animal may eat that, it may be absorbed by plants there.
8 Some of our people still use and make baskets, and in order
9 to make these baskets for ceremonial purposes, they may chew
10 the weeds to soften it or to mold it into a basket for that
11 ceremony.

12 Once that's contaminated, they may eat that animal
13 or they may ingest some of the radioactivity into their
14 system. Then it stays not only within their system, but for
15 generations to come.

16 So, those children that are not yet born may still
17 have some significant impact from genetic disorders.

18 Not only -- but once that plant -- it might no
19 longer be there because it might be contaminated. It may
20 die, and once that plant is gone, that is the end of that
21 basket, that basket-making. That is the end of that
22 ceremony. That is the end of that song that's sung that we
23 have been directed to do to the Creator to acknowledge what
24 he has put here for us and how we are to live, so that is
25 just one example.

1 I guess, as I said, once we embark on working
2 together there is a lot to be shared that our people are
3 willing to share and want to share. However, there has to
4 be a process set up, a system of interaction and we would
5 look forward to working with you to do that, setting up
6 something where we could interact, and I do appreciate some
7 of the programs that have been in place, some of the
8 technical assistance, and some of the outreach that has been
9 done by some of the folks that are within the Nuclear
10 Regulatory Commission.

11 I'll just close by saying that we are still a
12 viable people. We still have jurisdiction over our lands
13 and the ability to regulate transportation, to regulate many
14 things within our jurisdictions, and we have this from the
15 historical standpoint and we have it today.

16 I am from Oklahoma. Our people fought along with
17 General Jackson at the Battle of New Orleans, and he thanked
18 us by moving us at gunpoint to Oklahoma, where we now
19 reside. We lost many people on that Trail of Tears in the
20 winter, but we still have our lands and we have the
21 semblance of our culture, although it's not as strong as it
22 once was, in our new homelands, but even then back in those
23 days we tried to work with this Federal Government, setting
24 up bicameral legislation, setting up a judicial system, an
25 education system to show that we were to coexist and work

1 with our neighboring newcomers.

2 But in one instance there was a Federal Judge in
3 Oklahoma who presided in Paris, Texas, and he would come to
4 the Indian territory on occasion to fish and to hunt, and we
5 had a judicial system and Choctaw-speaking Judge who
6 presided over that court. At one point in time in history
7 the Choctaw Judge was ordered to be a witness in a Federal
8 court in Paris, Texas. Reluctantly he went and he started
9 speaking his own language and telling them what he was
10 asked, and the Judge said I know you speak English, you have
11 to speak English -- you are on our lands now, and he said,
12 besides, if you don't, you are in contempt of court and I
13 will put you in jail until you decide to speak English.

14 So the Choctaw Judge complied with that and after
15 his presentation, after he testified, he went up to the
16 Judge and said, "Your Honor, I assume you plan to come back
17 to the Choctaw Nation to once again fish, enjoy the
18 pleasures of our bounty. He said yes, I do, that's one of
19 my favorite places to go. He said just remember, if you do,
20 you have to speak Choctaw while you are on our lands or you
21 going to jail. That Federal Judge never came back. Thank
22 you very much.

23 CHAIRMAN MESERVE: Thank you very much.

24 Our next presentation is by A. Edward Scherer, who
25 is the Manager for Nuclear Regulatory Affairs for Southern

1 California Edison.

2 MR. SCHERER: Thank you. By the way of
3 background, I am with Southern California Edison, which has
4 responsibility for the operation of two operating units and
5 one shut down unit that is leaving its current SAFSTOR
6 status and will be actively decommissioned over the next few
7 years. While I sit on the NEI Decommissioning Working Group
8 and the EPRI Executive Committee on Decommissioning, and in
9 a previous position I had worked for an NSSS vendor who --
10 and at one time had been Vice President for Regulatory
11 Affairs for a fuel cycle facility, today I will speak for
12 myself and based on my experience, and I intentionally did
13 not have any overheads so that I could keep my presentation
14 informal, listening to some of the other presentations, and
15 make my comments accordingly -- also, to avoid the ire of
16 Commissioner Merrifield.

17 [Laughter.]

18 MR. SCHERER: Today I have been asked to cover
19 both decommissioning and dry cask storage issues and I will
20 attempt not to re-cover any of the issues that the
21 Commission heard yesterday at their presentation on
22 decommissioning, but talk about the processes that are
23 involved in some of those issues.

24 When I think about the issue of decommissioning, I
25 think of the three phases that a plant has to go through,

1 the beginning, the middle and the end of decommissioning,
2 each having their own challenges and opportunities.

3 The first phase or the beginning is the transition
4 from an operating plant to a decommissioned plant, the
5 second being the decontamination, decommissioning, and the
6 transition of the fuel from the wet storage of the spent
7 fuel pool to dry cask storage today lacking a federal
8 repository, and finally the license termination at the end
9 of the decommissioning process.

10 Going to the transition period, there is obviously
11 difficulty in understanding the requirements that exist in
12 terms of the requirements for a plant that is shut down, no
13 longer posing the same risks that a plant does when it is
14 operating, and the timing of the transition to a shut down
15 plant status.

16 Decommissioned plants pose a unique challenge to
17 the Staff that needs to be understood in that there is a
18 finite amount of money that is made available to us by our
19 ratepayers for decommissioning. Monies that are spent on
20 unnecessary regulatory requirements at the early part of the
21 decommissioning process are monies that are not available at
22 the latter part of the decommissioning process for things
23 such as ALARA concerns and further reducing the residual
24 radioactivity that will be left.

25 As you heard yesterday, the process in place tends

1 to frustrate all of the stakeholders if for no other reason
2 by how long it takes to get to resolution of these issues.

3 When we get to the process of decommissioning it
4 is relatively straightforward -- construction in reverse --
5 except for the issue of taking the fuel, the spent fuel,
6 from the spent fuel pool, wet storage, to dry cask storage.

7 Let me dissent from some of the previous speakers.
8 I have something good to say about the Staff. I think they
9 have done an outstanding job in the Spent Fuel Project
10 Office in supporting operating plants, in reviewing
11 applications that came in as they were received in a
12 disciplined manner and a disciplined process, and achieved
13 timely approval of the applications that were submitted.

14 Unfortunately, their process resulted in numerous
15 plant-specific applications that were approved that left
16 unresolved some of the generic issues that were not resolved
17 by specific applications without a process to address those
18 issues upfront, so all of the stakeholders understood what
19 was required and were able to get it resolved.

20 As an example, when we went to market to buy a
21 certified cask for use at San Onofre, there are no certified
22 casks that are certified for the seismic requirements for
23 the Western states.

24 Now those issues can and I am sure will be
25 readdressed on a timely basis, in time for our needs, but it

1 requires a resource-intensive effort on the part of each
2 Applicant, on the part of the Staff to support it, and it's
3 probably not the best use of the NRC's resources nor the
4 resources of the industry nor all of the stakeholders,
5 because it pushes to plant-specific application all of the
6 issues that everybody deserves to have addressed once and
7 for all.

8 This gets to the third and final part of
9 decommissioning, the license termination plan. Clearly I
10 would probably be preaching to the choir to talk to the
11 Nuclear Regulatory Commission about the difficulty that
12 everybody has with the current debate occurring between the
13 Nuclear Regulatory Commission and EPA as to the final
14 cleanup standards for the site, except to say that the
15 debate adds a note of discord and uncertainty when dealing
16 with all of the stakeholders in understanding to what
17 standard we would clean up the site and what is a safe and
18 acceptable standard.

19 Nevertheless, let me address an issue that is part
20 of that, and that is in the discussions with the Staff there
21 is a natural tendency on the part of the NRC Staff to want
22 more and more detail in each application for license
23 termination plan. That is understandable. It is part of
24 the process. Unfortunately the more detail that is required
25 or requested of Applicants, the more the process is pushed

1 to the back-end because it is only through the
2 characterization of the site and the development of the data
3 that the licensee is able to supply those details.

4 Not only does that push it later in the process
5 for the licensee but I personally believe that is bad public
6 policy because now the public hearing and the public
7 exposure to the license termination plan is pushed back
8 until all those details can be developed.

9 We believe a better public policy would be served
10 by moving the license termination process forward, obtaining
11 all the stakeholders' input earlier by avoiding that
12 unnecessary level of detail in a process that I am familiar
13 with in other aspects of nuclear reactor regulation, such as
14 the advanced plants that I have worked on, and that can be
15 done with methods, procedures and acceptance criteria. By
16 doing that, moving the process forward, getting the public
17 involved earlier, and having all the stakeholders, local
18 stakeholders and the national stakeholders, involved, we
19 believe that would make better public policy.

20 Those are my comments on the two areas of
21 decontamination, decommissioning, and dry cask storage.

22 CHAIRMAN MESERVE: Thank you. Let me turn now to
23 Mr. Jack Allen, who is the Manager of Columbia Plant of the
24 Westinghouse Commercial Nuclear Fuel Division.

25 MR. ALLEN: Thank you. May I have the second

1 slide, please.

2 It is a pleasure to be here, and we appreciate
3 your hosting this. I am speaking on behalf not only of
4 Westinghouse but of the fuel fabrication industry. I would
5 say upfront that NEI, Westinghouse, and all the fuel
6 fabricators regularly meet with the Commissioners and the
7 Staff. We average about twice a year, and that has been the
8 primary nature of my involvement, and that has been a very
9 positive experience, so I would start out with something
10 that is working quite well.

11 We feel that the industry meetings, because there
12 are 10 locations that really comprise the U.S. fuel
13 industry, when we meet together the structure of the meeting
14 eliminates issues associated with site-specific concerns by
15 company and allow us to come before the NRC, before the
16 Staff in a common way. We believe that this type of
17 approach will be very important as we proactively look
18 towards the future in light of the events with Tokaimura.

19 For example, we are very close -- having decided
20 to recommend an independent assessment team of the fuel
21 facilities that would go above and beyond the normal,
22 routine self-assessments, the regular assessments by the
23 regulators to a self-assessment because of the concerns that
24 came out because of Tokaimura. We finalized last week
25 members that we would recommend and this week we are working

1 on a team protocol, so you should in the very near future
2 see some more concrete recommendations relative to
3 Tokaimura.

4 We believe that is a positive example of things
5 that we are doing together to work as an industry with the
6 NRC.

7 But now to my selected area of comments with
8 interaction between the NRC in Part 70 primarily, the
9 revision, and ask you can imagine, interactions have ranged
10 from bad to good. Quite honestly, the process started over
11 seven years ago, as Dr. Paperiello mentioned earlier, and
12 was really ineffective due to poor communications early-on.
13 In fact, because of the authors' protectiveness they were
14 unwilling to discuss and resolve issues. It became a
15 combative process.

16 However, maybe due to the Congressional oversight
17 committee or certainly due to the senior management of the
18 NRC's involvement, we have seen a lot of progress in
19 particular over the last 18 months. A dedicated NRC team
20 working with industry has really worked effectively through
21 draft and formal revisions. We have openly debated the
22 issues, compromised and resolved things, and I think their
23 credit this was shepherded by Dr. Paperiello and Elizabeth
24 ten Eyck.

25 The keys to that progress were really that the

1 process changed to allow, before the formal docketing
2 process, a lot of review, a lot of iterations, and in fact
3 both the rule and the review plan were pursued
4 simultaneously, which I think is the key, and I will
5 recommend that later.

6 However, we recognize that the burden for change
7 is shared between the industry and the NRC and we have
8 actively written portions of the documentation for review by
9 the NRC and that has been a part of the compromise that has
10 occurred. It has been a good process.

11 So what would I recommend from lessons learned for
12 the future? Well, I believe that as we all talk about it,
13 this is a process of continuous improvement and change
14 management.

15 So, I'd start with dedicated teams using an
16 interactive approach in advance of what has become the
17 formal docketing process.

18 Mr. Kane in Spent Fuel, and Dr. Paperiello in Part
19 70, have given us good example there, and I consider that we
20 need to continue to use those.

21 Second of all, we need to establish schedules and
22 joint expectations so that we can allow adequate time for
23 review, for debate of some of the issues to resolve them,
24 and to rewrite. I think that's a very key part of the
25 process.

1 And more importantly, as part of those schedules,
2 we need to keep the information flowing and allow enough
3 time to process the information and do a quality job.

4 So it's participation, visibility, and
5 interaction, and that was one of the frustrations in the
6 early part of those seven years working on the revision of
7 Part 70 that I think we've really handled over the last 18
8 months very well.

9 We need to develop all the documents together:
10 the rules, the licensing, and the Standard Review Plan, the
11 guidance work.

12 As many of us have said, the devil is in the
13 details of what we're doing, so we consider that a major
14 part of what has to be done.

15 We also continue to enforce the risk-informed,
16 performance-based approach, away from prescriptive
17 regulations. I'd like to see the extensive use of the
18 Internet. It's a great tool, however, we also need to
19 recognize that timely feedback on both the part of the
20 industry and the NRC will make quality work time and a
21 quality product after we're finished.

22 There are several areas where in the future,
23 this--in fact, current--this technique that's been developed
24 on Part 70 should be applied. In fact, Part 71 revision has
25 been initiated, but, in fact, is not being currently

1 organized in a way like was done on Part 70.

2 We would really encourage that, because
3 transportation has become a key issue with many of the
4 things in our industry, shipping to Europe and several other
5 countries outside the U.S., we face this very, very
6 predominantly

7 Finally, we recommend that we continue meetings
8 with the NRC between the industry and NRC. The workshops
9 have been given as a good example.

10 Some of the workshops have been extremely
11 productive, some have not. We firmly believe that the
12 Commission's involvement, the senior management involvement
13 at a regular point in these meetings has made the workshops,
14 and, in fact, this forum, a success.

15 We believe that we will share as the industry in
16 participating with prioritization, the writing, and the
17 debate, but the open-mindedness of the NRC has been a very
18 big help in the progress we've made to date.

19 Thank you for inviting me.

20 CHAIRMAN MESERVE: Thank you. Let me now turn to
21 Ms. Katie Sweeney, who is here representing the National
22 Mining Association.

23 MS. SWEENEY: Thank you so much for the
24 opportunity to speak today. I have been fortunate over the
25 last five years to represent most--not quite all--of NRC's

1 uranium recovery licensees, in a variety of rulemaking
2 activities, notice of proposed rules, changes to guidances.

3 And I'm not going to focus on any one rulemaking
4 or one issue. I think everything that I'm going to speak
5 about today can come under three headings: The need for
6 true, open, two-way communication involving the right
7 people, and timing is everything.

8 On the need for true, open communication, on
9 occasion, the uranium recovery licensees have gone to a
10 meeting with some NRC Staff, and have heard that the Staff
11 is just there to listen.

12 Well, we think that it's a lot more helpful if
13 there is two-way communication, and a back and forth.

14 And we realize, especially at the early stage, if
15 it's a scoping meeting, that the Staff can't make a decision
16 right there and say, oh, yes, this is what we're going to
17 do. But they can ask questions or provide some input, or
18 say, we're going to look into this.

19 We find that this happens more frequently when
20 it's a new approach suggested or a new issue that comes up,
21 and there seems to be a reluctance to look at new
22 approaches. We think this is kind of an institutional bias
23 that can only change through strong leadership from the top
24 down.

25 We realize that new approaches sometimes cost

1 money, but if they optimize efficiencies and they protect
2 the public and the environment, then they should be
3 considered, and it may be that it might be more costly up
4 front, but cost less for everybody in the end.

5 We think that the Internet is a great way to
6 communicate, we think that NRC is using it well, and they
7 could use it more extensively. I agreed with the comment
8 about reestablishing some list servers; I thought that was a
9 good comment.

10 Of course, the Internet cannot always replace
11 face-to-face meetings, but it's still a good and useful
12 tool.

13 Getting the right people involved sounds like it
14 should be simple, but it's not always. For a licensee, the
15 right person for them to be speaking to at NRC might be
16 their Project Manager, and often issues can be dealt with
17 very simply, very quickly that way.

18 And I have found that most uranium recovery
19 licensees are quite happy with their interactions with their
20 Project Managers, except for one thing--their Project
21 Managers tend to change about every three or four months,
22 and then they are talking to somebody new and reeducating
23 somebody new.

24 For broader issues, the right people are usually
25 the Staff, the Uranium Recovery Staff. The Association has

1 had a very good relationship with the Staff. We have an
2 annual Uranium Recovery Workshop that has been very, very
3 helpful in getting issues out on the table early, and we
4 appreciate the Staff's help in keeping those going.

5 But sometimes we can't just stop with the Staff;
6 we have had on occasions, issues where the Staff understands
7 it very well, but then somebody else is writing the rule.

8 And there is sometimes a disconnect there, and we
9 think that there could be more interaction between the
10 people writing the rule and the Uranium Recovery Staff.

11 Sometimes it's not just those. We need the
12 General Counsel's Office or the Commission to get involved.
13 There were issues that we raised with the Staff for several
14 years, and it took that long for both the Staff and the
15 Association to realize that we were the wrong people to be
16 dealing with these issues, and they needed to go up to the
17 Commission level.

18 So, we have actually managed to do that, and we
19 have had some meetings with the Commission, some briefings
20 with the Commission, and we think those have been very
21 helpful.

22 The General Counsel's Office, as always, plays a
23 role. Unfortunately, their role is not always as
24 transparent.

25 Sometimes we just see references to their

1 decisions or their papers in Staff papers, but we never get
2 a chance to actually see the OTC's decisions and actually
3 respond to the issues raised.

4 And so that might be an area where we could work
5 on making the process more transparent.

6 And sometimes the right person missing from the
7 table actually are the stakeholders. There are times when
8 Agreement States or non-Agreement States are meeting with
9 NRC on issues where it might actually be helpful to have the
10 stakeholders there.

11 I realize that you can't make every one of those
12 meetings open to the public, but maybe part of those
13 meetings could be made open to the public, or a summary of
14 the meeting be made available.

15 And, finally, timing is everything. Getting early
16 input, I think, helps everybody. We have had scoping
17 meetings on possible changes to Part 40. They were very
18 good, well attended, held in many parts of the country, and
19 they were helpful in framing issues that are now still being
20 addressed.

21 We don't have any conclusions on that, but at
22 least everybody got to get in there early and give their
23 viewpoints.

24 But in other cases, we haven't had that same
25 opportunity. For example, in the establishment of Standard

1 Review Plans, many changes had to be made to the In Situ
2 Leach Standard Review Plan at a very late date, because
3 there were no scoping meetings, even though they had been
4 requested by stakeholders.

5 I think timing plays a big role, and we've seen
6 improvement with NRC, like the scoping meetings last week on
7 the release of radioactive materials. I think this is a
8 good approach and one that should be followed in the future.

9 Again, I thank you for the opportunity to talk
10 today.

11 CHAIRMAN MESERVE: Thank you very much. I think
12 we now have encompassed everyone who is around the table
13 here, other than the NRC representatives.

14 What I'd like to turn to now is actually have some
15 discussion of some of the issues that have been raised.

16 Let me kick this off with really a question that's
17 directed at the Staff: Several of the people around the
18 table have raised the concern that they submit information
19 to the NRC and it's not apparent that it has been evaluated.

20 Obviously, if people are going to stop
21 participating, if they don't think that they're having an
22 impact on the system and find other means by which to make
23 sure that their concerns are heard, I think it might be
24 helpful if one of you would make a comment as to how you
25 handle the comments when they are submitted, how you analyze

1 them, and, in particular, how you let people you know how
2 you've analyzed them, and see whether you have some
3 suggestions or perhaps others in the group might have some
4 suggestions as to how to make that part of the process more
5 transparent.

6 DR. PAPERIELLO: Yes, let me address that, because
7 as a practical matter, it has evolved, I mean, from the
8 beginning of this thing.

9 Clearly, when we have the formal process or a
10 formal process is involved under the Administrative
11 Procedures Act, we have an advance notice of proposed
12 rulemaking, or a proposed rule.

13 All comments have to be formally evaluated and
14 documented; that's a requirement. Let's give some examples:

15 This has been and is being done on Part 35 and
16 Part 33, where we have put out on the street, a proposed
17 rule. We receive comments, but the point is, we didn't just
18 do it through the Federal Register; we did it by inviting
19 comments over the Web, inviting comments as a result of
20 public meetings.

21 They, in fact, were evaluated; they have to be.
22 Now, the consequences, of course, is that Part 35 was
23 originally supposed to be finished in June of '99 or July of
24 '99. We are currently not looking for that rule to be
25 completed for probably another year.

1 As the Commission has seen in the package we gave
2 to the Commission several months ago, rather than a package
3 three inches thick, this is almost maybe nine inches thick,
4 because we, in fact, got comments and we had to respond to
5 them.

6 A similar situation occurs with Part 63; that was
7 supposed to be a final rule due to the Commission in
8 December of 1999, and we had to ask for an extension to
9 March. It's a similar situation.

10 We asked for comments, we got them, and, of
11 course, it obviously added to the resource burden. I'm not
12 saying that negatively, but I said there's a tradeoff on all
13 of this in terms of how much we get and what we can do with
14 it.

15 And I'll make an observation: When there are
16 actually words down there--and let's go to the issue of what
17 I call writing a rule or writing a Standard Review Plan on
18 the Web. This is before you have a proposed rule for the
19 Commission's consideration, or before you have a proposed,
20 even a draft Standard Review Plan, the Staff puts words on
21 the Web.

22 We get interactions and comments from people, and
23 in some case, at least I believe with what we did in the
24 case of Part 70, and actually Part 35 before it was a
25 proposed rule, we were telling people how we were

1 responding, and we were doing, you know, line-in and
2 strike-out on the Web, and we actually did that.

3 But these are things that we have done in the past
4 two years. Prior to that, obviously, we were not nearly as
5 ambitious. Now, let's give a consideration to another case,
6 clearance, which is a process that we're going on with right
7 now.

8 At this point, I have what I call an informal
9 process. We are not into the Administrative Procedures Act
10 rulemaking. We don't have an ANPR; we don't have a proposed
11 rule.

12 We're holding meetings. We have transcripts that
13 are several inches thick. I don't know how many comments
14 we're getting. We are getting hundreds, thousands.

15 I don't see where we have--the Staff is not going
16 to have a position. Our target--in fact, the Commission
17 gave the Staff some fairly clear direction on how to
18 proceed. The issues paper was reviewed by the Commission,
19 and the paper out there for consideration of the issues was
20 one that the Commission had formally approved of.

21 The Staff's task is to give the Commission
22 options. It's hard.

23 Now, what we would do is, we try to bin the
24 comments. The other alternative is for the Commission--and
25 obviously this isn't practical--to read essentially the

1 transcripts from all these meetings. We have to distill
2 this thing down to what are the issues.

3 And this is a case where it is clearly people who
4 are 180 degrees apart on how we ought to proceed on this
5 thing. In fact, I drew myself a little chart here that
6 looks like a bow tie, of the interest of people sitting
7 around the table.

8 It has a nexus on clearance, the general license
9 rule. In order to keep material out of, you know, the scrap
10 material, which would then require one to move into
11 clearance; the interest of the general-license
12 manufacturers, the interest of the Agreement States.

13 So you're trying to--a lot of these things are
14 interrelated. Until we have words--in other words, if we
15 had words of a final resolution, then you could respond to
16 each individual comment, which is what you do on a proposed
17 rule.

18 But we're in this information-gathering stage, and
19 about the best that I can give to the various stakeholders
20 is to try to adequately represent their views in a summary
21 paper that I give the Commission for their decision.

22 You really can't respond to, say, how do you
23 handle--I won't say you can't but it would certainly add
24 probably a year to this particular process, because you'd
25 have to tell them how in the Commission paper, their input

1 was reflected, and I'm not sure that's quite practical.

2 I wish I could give a better answer, but there is,
3 as I mentioned, a tradeoff between the resources that we
4 have in this, and timeliness and the formality of the
5 process.

6 COMMISSIONER DIAZ: Mr. Chairman, in the interest
7 of better communication, could we have a five-minute break?

8 CHAIRMAN MESERVE: I think that's probably a
9 motion that cannot be refused. We'll take a five minute
10 break.

11 (Recess.)

12 CHAIRMAN MESERVE: Why don't we get under way.
13 Let me at the outset commend Commissioner Diaz for an
14 excellent suggestion that I think benefitted all of us up
15 here.

16 I would like to follow up a little bit on the
17 point that several people have raised, namely the issue of
18 whether and how the NRC responds to comments. Bill Travers
19 I think had mentioned to me that he had some further
20 comments he would like to make on that issue.

21 DR. TRAVERS: Thank you, Chairman.

22 I was also struck by the fact that this theme of
23 the importance of identifying for commenters how the NRC
24 deals with comments and the fact or stipulation of some of
25 the details of that consideration and what we have done or

1 not done with the rule. Making it clear to stakeholders I
2 think is important. I think in fact one of the commenters
3 pointed out it is a factor in the sort of trust that can be
4 built or lost when dealing with a regulatory agency, and I
5 agree with that.

6 While Carl pointed out some of the historical
7 applications that have involved NRC interactions with
8 stakeholders in some of our concerted efforts really to deal
9 with comments, I don't want it to be lost that we agree that
10 more can be done -- in fact, in the context of some of the
11 strategic planning efforts that are ongoing within the Staff
12 right now, most pointedly in the Materials and Waste arenas,
13 we are actively going through a fairly structured process to
14 identify the strategies that we can employ against strategic
15 outcomes.

16 One of the important outcomes that we have
17 identified in that regard is enhancing public confidence in
18 NRC processes and programs. I don't mean to suggest that
19 our interactions are exclusively related to that outcome. I
20 think effectiveness and efficiency of our activities also
21 play a role. Maintaining safety is another outcome and so
22 forth, but an important outcome and one that we are taking
23 on in a fairly structured way, as I indicated, is looking
24 for strategies and ultimately the sorts of work that we can
25 do to enhance how we deal with the public, how our processes

1 for communication are either effective or not.

2 We are doing that right now. We expect to bring
3 to the Commission some identified, specific suggestions for
4 that. I think this meeting frankly has been very helpful.
5 A number of very tangible suggestions have already come
6 up -- enhanced use of the web not just in rulemaking but in
7 public meetings, how we respond and are prepared to respond
8 to stakeholder questions and comments -- so I think there is
9 a fair range of work, of activities that we are considering.

10 We are resource limited. I will point that out,
11 and Carl was absolutely right. We have to look for the
12 right balance, frankly, optimizing our resources, and I
13 think this become particularly important when you look at
14 the diversity of issues that the Materials office faces.

15 I am always struck when I sit around a table like
16 this and take note of the diversity of not only stakeholders
17 but their issues and views. It seems to me that that
18 underscores the importance of the processes and the
19 communications that NRC uses.

20 I do want to indicate in the going forward sense
21 we are sensitive to that issue and we are actively looking
22 and we think today's comments have been useful and we will
23 take them up as we go forward. Thank you very much.

24 CHAIRMAN MESERVE: Thank you, Bill. Carl?

25 DR. PAPERIELLO: Yes. I had a discussion during

1 the break which I think really sheds some light on what I
2 was trying to say, and I think is an issue here, and that is
3 that when we -- and the lessons learned I'll take away --
4 that when we hold public meetings and in various meetings
5 seek stakeholder input we need to make it very clear to
6 them, and actually to ourselves, how we are going to use the
7 input. Will we respond to every comment on a one-on-one
8 basis or will we aggregate it, and how the person who gave
9 us the information will be able to see how it is being used,
10 and I take that as a lessons learned out of what I have
11 heard today.

12 I think it is important. I do want to make it
13 clear I don't think that in certain circumstances we can
14 respond in a very formal way to every bit of input that we
15 have because there are -- NMSS right now is looking at a
16 total of about 30 plus FTE for rulemaking and there's
17 millions of people in the country. I mean it is just a
18 question of volume, but we should let people know how --
19 that what they can expect from what they are giving. I
20 think that is an incredibly important thing.

21 In getting ready for this meeting, it became clear
22 to me we would need to make our processes more formal, and I
23 don't want to make them more formal -- as we notice, we are
24 very process-oriented -- that we would stifle innovation,
25 and it is tied in with training our people, how to conduct

1 public meetings.

2 This is part of it. They need to let the
3 people have expectations -- so it all comes together in
4 getting it.

5 One slide here I noticed the NRC Staff tries to do
6 the right thing, and I think that is good and bad. Those of
7 us who are trained as scientists or engineers, particularly
8 those of us who were trained in a liberal arts school where
9 we had a lot of history and English and philosophy relevant
10 to our science and math courses is you will note the
11 difference between the textbooks. Most good science
12 textbooks give problems and the answers are at the end of
13 the book, so you can always check whether you did it right.
14 I am unaware that any of my books on either philosophy,
15 history or literature did the same thing, so part of our
16 problem to our training is there is a right answer for every
17 question, and the reality is when you start dealing with the
18 regulatory activities is there aren't always right answers,
19 at least not in the sense that you can generate them through
20 an algorithm.

21 So in some sense for the NRC Staff, when we elicit
22 public input we have to undergo a cultural change, because
23 we come from an educational culture where there is a very
24 well-defined process to get to the answer. Thank you.

25 CHAIRMAN MESERVE: I would like to ask a question

1 of the various participants who are not NRC people. Several
2 of you have mentioned the importance of the Internet as a
3 means of communication. Dr. Ring had made some comments
4 about the problems of using the current Internet website in
5 terms of getting information and the suggestions for how
6 that might be improved.

7 I would be interested in hearing from some of the
8 others around the table as to whether they have used the
9 website as a means of getting information, whether they have
10 had difficulty, what kinds of problems they have had, what
11 suggestions they have as to how that site might be improved
12 to facilitate this process.

13 MR. FLETCHER: Roland Fletcher. I use the webpage
14 quite frequently to search for the answers to questions that
15 seem to pop up invariably when dealing with in-state
16 licensees as to whether or not there are examples of what we
17 are going through from a regulatory perspective that have
18 already been dealt with in incidents or events or licensee
19 dealings by the NRC.

20 I find the webpage very helpful. It is a rich
21 source of information but it always seems that the specific
22 question I have is not there.

23 [Laughter.]

24 MR. FLETCHER: You know, it is not there at the
25 time I am looking for it but it -- I have it on my favorites

1 list and to me it is a very good source of information, and
2 I use it frequently.

3 COMMISSIONER MERRIFIELD: If I may add to the
4 Chairman's question, to think about it, are there other
5 websites that any of our guests use that we might look to as
6 a model that we may follow to improve our website.

7 MR. HERNANDEZ: I have had an opportunity to use
8 the website in relation to the free release issue and found
9 it to be excellent.

10 However, we were given a specific address to go
11 to. I think Staff has just done a tremendous job at putting
12 all the information on there in a very timely manner that
13 has allowed me to then communicate that information to our
14 interested parties, our members.

15 I also use the OSHA website fairly regularly and I
16 believe the way it is organized, the OSHA website is
17 organized is more user friendly than the NRC website in the
18 front pages. Once you get into the issues you can find what
19 you want fairly easily. I found it a little more difficult
20 to use the NRC website before I was given the specific
21 locations to go.

22 CHAIRMAN MESERVE: User-friendly in that it was
23 hard to navigate through the pad pages or --

24 MR. HERNANDEZ: Yes. Very obviously an agency
25 with very complex rules, almost Byzantine --

1 [Laughter.]

2 MR. HERNANDEZ: -- activities, but -- I don't mean
3 to be negative. It is very complex and if you are not
4 familiar with it -- and OSHA is as well, but they just have
5 laid out their site making it a little easier for a
6 layperson, if you will, to navigate than the NRC website,
7 but having said that, again what you have done on this
8 clearance is excellent, very timely, very useful
9 information.

10 MS. NIMMO: I would just like to echo what Peter
11 Hernandez said. When we have been given an address, the
12 information is there. If we don't have the address, trying
13 to get from a particular topic to where it is on the website
14 is extremely difficult, so any efforts that could go towards
15 reorganizing it or having a better index I think would be
16 very valuable.

17 MR. ALLEN: If I may? I think that the analogy
18 that we are drawing is that when there's specific
19 interaction you can do it in a dedicated way. The general
20 information, I think there is a certain portion of that
21 information that is readily available and we have no
22 difficulty getting it, so I think that is what is key about
23 our interactions, but I think the use of the Internet -- we
24 also need to be careful that the timeliness of the
25 information, just because it is electronic doesn't mean that

1 you can read it faster or process all the information that
2 is there. I think you still have to set up the processes to
3 allow for the quality time to go soak and debate and
4 rewrite, so let's not get carried away with just to use the
5 Internet, which I think is positive, and ignore the other
6 parts of the process that occur.

7 CHAIRMAN MESERVE: Roy?

8 MR. BROWN: Yes, I think it is a great tool we can
9 use to get access to NRC documents. The only two
10 suggestions I would have, and it sounds like we are all
11 repeating ourselves here, is we want a better search engine
12 because you still have trouble going in and saying you want
13 a particular topic and you still have to spend quite a bit
14 of time trying to find exactly what you want, and also the
15 timeliness of documents on there.

16 Invariably we will hear about something and then
17 go to the website, look for it, and it is not there for a
18 week or so, but that is much, much better than having to
19 send someone in to the public document room and make
20 photocopies of it, so I really think the NRC is doing a
21 great job on the website and I look forward to seeing what
22 they do in the future.

23 CHAIRMAN MESERVE: I would like to make sure
24 that -- Katie, did you have a comment on the website?

25 MS. SWEENEY: Yes. I just think that improved

1 links would help too. I know one time there was a specific
2 uranium recovery rulemaking where you could submit comments
3 via that webpage, but it wasn't the same, the main webpage
4 where you can submit rulemakings. It was only under the
5 uranium recovery page, so if you looked just under that
6 interactive rulemaking page you would never have found it,
7 so I mean if there was a link there, then you could have
8 just hopped from one to the other.

9 CHAIRMAN MESERVE: Good. These are all very
10 helpful.

11 I would like to -- yes?

12 MR. KAMPS: I just wanted to point out that there
13 is a whole, there is a large set of people that are on the
14 Internet and are concerned citizens. I will speak about
15 Michigan in particular.

16 The Palisades Nuclear Plant is in Covert Township,
17 which is an economically low income area, and in addition to
18 just the issue of class and access to the Internet, there is
19 also the generational issue. A lot of the concerned
20 citizens that I worked with in Michigan are not familiar
21 with the Internet. They are people in their retirement
22 years who haven't learned that technology, and so the
23 Internet can't be the exclusive means of communication with
24 the public and I think that in Michigan my experience with
25 the NRC has been lacking in helping people who aren't

1 plugged in in that way to learn about the issues, even to
2 learn about the public meetings taking place.

3 There have been a number of times when the public
4 wasn't notified in a timely fashion that meetings were
5 taking place and found out at the last minute and very small
6 turnouts of people that found out the day of the meeting.

7 COMMISSIONER MERRIFIELD: Mr. Chairman, I want to
8 make a comment on that, primarily because my brother is a
9 professional librarian in upstate Wisconsin, and one of the
10 things I think we need to think about, and I think the
11 comment is a good one, is working with public libraries
12 around the facilities that we regulate, because many of them
13 do indeed have access to those facilities in terms of
14 relying upon public librarians to help those who aren't as
15 Internet-aware or don't have the facilities in their own
16 homes but can go to a public library to utilize those
17 services so that that information is available to a wider
18 audience. That may be something we need to think about.

19 CHAIRMAN MESERVE: I would like to make sure that
20 all of my fellow Commissioners have an opportunity to
21 explore issues with the people here as well, although I have
22 got a number of things that I could raise.

23 Let me give each of them a shot at raising issues,
24 and I would like to turn first to Commissioner Dicus, who,
25 as I indicated, is the inspiration what I view as a very

1 helpful meeting.

2 COMMISSIONER DICUS: Thank you, and first of all,
3 let me apologize for this voice, so I won't talk much
4 because I don't think you will enjoy listening to it very
5 much, but I do want to echo this issue that we have been
6 discussing with regard to feedback on comments that you make
7 and whether you feel that feedback that you get from us is
8 helpful.

9 I think Mr. Brown had mentioned, you know, really
10 tell us why you have accepted or not accepted, as the case
11 may be, a comment, but I want to go a little bit further
12 into the whole issue of communication that parallels a lot
13 of what Carl was talking about and most of you, many of you
14 may remember that I have spoken to this before.

15 In April I went out to Yucca Mountain and I spent
16 a day and said I will meet with anybody who wants to meet
17 with me, and I spent a day meeting with state and local
18 officials and public interest groups and et cetera, and I
19 learned that even though we were out there meeting, we were
20 not communicating, and I learned even that some people
21 thought we were part of DOE. They didn't realize that we
22 were different.

23 So we came back. I met with Carl. I talked with
24 Chip. We sat down -- and several of the people involved in
25 the waste issue -- and we looked at this and we realized we

1 weren't communicating, so we are working on this and I think
2 it is extremely important.

3 I think Mr. Kamps has mentioned a couple of
4 things. Well, we don't know how to be part of the process
5 or we don't feel that we get to be part of the process, and
6 that was one of the things that we discussed in Yucca
7 Mountain because people did not understand what the process
8 was and how to be a part of that process, so I think in the
9 communication area -- I am not going to go into that
10 anymore. I gave a speech in Denver last week which is why I
11 think I am talking like I am talking today, not that I
12 dislike Denver, it is a nice place, but it was cold.

13 And I got a chill on the very issue of
14 transparency and communication, and I think that speech is
15 now on the Web site or about to get on the Web site if it's
16 not already. So you might find it useful to go into.

17 I want to raise then the question
18 different -- changing horses now, quite a bit. As the issue
19 that I think Ms. Nimmo --

20 MS. NIMMO: Yes.

21 COMMISSIONER DICUS: And it goes to you and to Mr.
22 Fletcher, and it's the issue you brought up being a source
23 manufacturer working in multiple States, 31 Agreement
24 States, and slightly different requirements that you might
25 run into from State to State.

1 I was director of a State program, and this was a
2 concern to me at the time I was director of a State program
3 on whether or not the NRC should in fact have very strict
4 compatibility issues when it's interstate commerce and a
5 national company. And I would like -- I think I know what
6 your position is, but if you want to add to this, and I
7 would like for Roland to respond as well, if he would.

8 MR. FLETCHER: I had the fortune actually of
9 having the opportunity to work on the NRC Agreement State
10 compatibility work group. And virtually every one of the
11 issues of State-to-State compatibility was raised whenever
12 we looked at a regulation that in different States was
13 applied differently.

14 The emphasis at the time and the direction at the
15 time, we were looking at from an Agreement State
16 perspective, and I haven't noticed any change, is that there
17 needs to be more flexibility imparted to the Agreement
18 States rather than more restriction, because different
19 States just have different levels of concern, of history, of
20 makeup of licensees that impact the rules that are made.

21 I understand the difficulty the Ms. Nimmo has
22 indicated, but I'm not sure that the rules can be made that
23 are going to make everybody happy. And in Agreement States
24 in particular, we have to look at those rules that, one,
25 meet the health and safety requirements that we're looking

1 for, and, two, conform to whatever internal State procedures
2 need to apply. I think it would be a mistake to dictate
3 more strict compatibility and then have a larger number of
4 Agreement States who due to local requirements can't meet
5 it.

6 CHAIRMAN MESERVE: Mr. Brown may want to enter
7 into this discussion, too, I think, being a national
8 company.

9 MS. NIMMO: Part of the problem we see is the
10 Agreement States sometimes pass rules that have consequences
11 for licensees outside their borders, and the licensees
12 outside their borders may not even know about the proposed
13 rules.

14 I was speaking to you in the break about problems
15 we just had in New York. New York decided that some of the
16 devices would no longer be generally licensed. That's
17 somewhat different for us and our customers, but we can
18 actually live with that. But there was a side effect to
19 that. We do service within -- we do installations and
20 ongoing maintenance to the systems in that State. And by
21 taking the devices off the generally licensed list, we lost
22 our right to go in as a California Agreement State licensee
23 and do service.

24 New York has very restricted reciprocity
25 requirements limited to 30 days a year. We can't live with

1 that. We have people who are reporting to work on a daily
2 basis working under a California license. So the outcome
3 was that New York said well, apply for a specific license
4 from New York. Well, we can do that, but you end up with a
5 very redundant licensing process that I think is a waste of
6 New York's regulatory effort as well as our radiation staff
7 effort.

8 New York is in the process of now granting us and
9 I think 11 other companies that we banded together with an
10 exception, and their statement was that was an accidental
11 outcome of that regulation. We didn't realize it was going
12 to do that. We didn't intend it to do that. I guess what I
13 would be looking for is if the Agreement States do want that
14 kind of flexibility, some mechanism to let people out of
15 state at least see what they're proposing and be able to
16 point out consequences like that, rather than waiting till
17 after the fact. I don't think it's a good use of taxpayer
18 money or a good use of radiation safety effort.

19 CHAIRMAN MESERVE: Roy?

20 MR. BROWN: Yes, I would like to address that as
21 well, and I don't want to get too far off the track, but I
22 can't resist an opportunity to talk about this.

23 We run into problems from time to time with this
24 and incompatibility from one State to another when we have a
25 new radiopharmaceutical developed, when it gets reviewed and

1 approved by NRC, but most of the time with a NARM product
2 it's very easy to go into Agreement States and non-Agreement
3 States and sold across the board, especially States that
4 adhere to CRCPD.

5 An area we do have a great deal of problem though,
6 and I know this is outside of NRC's jurisdiction right now,
7 and it would take a congressional mandate to change it, is
8 in the area of NARM products, cyclotron-produced products,
9 many of the important radiopharmaceuticals now are cyclotron
10 produced. There's a whole new class of radiopharmaceuticals
11 involving PET products, positron emitters, that also are not
12 governed by the NRC.

13 When manufacturers of these products come out with
14 a new product, it is very, very difficult to get that
15 approved. Sometimes you have to go to each individual State
16 to get approval. Once again, some of the good, strong
17 Agreement State programs in some of the States that adhere
18 to CRCPD licensing guidelines it's fairly easy, but then
19 oftentimes you'll have to go out to 18 or 20 or 25 of the
20 States and actually sit down with and file an individual
21 application with each one of them, and you end up with a
22 situation where you get this new radiopharmaceutical, this
23 lifesaving pharmaceutical approved in 20 States November 1,
24 and then invariably it'll take you six months to get the
25 rest of the 50 States approved, and that's really not good

1 public policy. But once again I realize that's not your
2 jurisdiction, but I couldn't resist the opportunity.

3 COMMISSIONER MERRIFIELD: Mr. Chairman, I actually
4 have a followup question related to this topic. Obviously
5 we as NRC play a role in dealing with all the States,
6 whether they are agreement or nonagreement States. And I
7 direct this to Mr. Fletcher.

8 One of the concerns that was raised was
9 notification, New York undertaking an action which licensees
10 in other States didn't have access to an understanding that
11 that was moving forward. Having just talked about the
12 Internet, is there any usefulness in an idea of perhaps the
13 NRC having sponsorship of a Web site in which Agreement
14 States would post on that Web site activities that they have
15 under way in rulemakings so that licensees would have a
16 one-stop place to go to and say gee, you know, check that
17 sheet, New York is undertaking an action on this issue, or
18 New Jersey's undertaking an action on this issue? Is that
19 something that -- any reaction? Something -- how do you
20 think the States might react to that?

21 MR. FLETCHER: Well, speaking on behalf of the
22 OAS, I think it would be something that we'd like to pursue.
23 It sounds like an information source that, you know, we'd be
24 foolish to overlook and that would in many cases provide
25 some information for reciprocity in particular for licensees

1 in other States. I think it is something we'd like to at
2 least get more information on.

3 COMMISSIONER MERRIFIELD: Ms. Nimmo, do you
4 believe that would be a helpful idea?

5 MS. NIMMO: Yes, I think that would be extremely
6 helpful. As we were discussing during the break, it is
7 possible for companies like mine to subscribe to the State
8 registers, but if any of you have spent a lot of time with
9 the Federal Register, you know it's a little bit like
10 looking for a needle in a haystack. You'll see stuff on
11 sweet potatoes and everything under the sun when you're
12 looking for your one issue that you need to follow up on.

13 COMMISSIONER MERRIFIELD: One sensitivity. If we
14 were to -- I mean, one thing is to invite the States to do
15 this. The other one is to say, you know, we really, really
16 want you to do that, and we're going to require Agreement
17 States to do that. I know obviously that's a sensitivity.
18 But any reaction to that?

19 MR. FLETCHER: At this point in time I don't think
20 "require" would be the word to use.

21 COMMISSIONER MERRIFIELD: Strongly encourage?

22 MR. FLETCHER: But I would prefer that the
23 proposal was elevated to the States to get comments back
24 before we, you know, make any kind of, you know, further
25 discussion about it. I think it's a good idea personally

1 for Maryland and I think a lot of other States will, but a
2 lot will depend upon how comfortable States are with being
3 able to provide that information on a timely basis even
4 through the Web site, because as you probably know, there's
5 going to be different levels of use, depending upon what the
6 State mechanisms, data mechanisms are.

7 MR. BROWN: We would also love to see something to
8 that effect. You can imagine it takes quite a bit of
9 resources to maintain 50 different sets of State regulations
10 and keep them current.

11 COMMISSIONER MERRIFIELD: I'm going to take credit
12 for that idea, because I just thought of it. So just in
13 case anyone wonders --

14 CHAIRMAN MESERVE: We'll stick you with the
15 "required," though.

16 [Laughter.]

17 Commissioner Diaz?

18 COMMISSIONER DIAZ: Thank you, Mr. Chairman.

19 First I'd like to underscore the importance that
20 the Commission during my time has placed on the issue of
21 open communication with stakeholders. I believe that it
22 might not be well known to all stakeholders the importance
23 that this Commission has placed on being open to
24 communications, and I'd like to just really, you know,
25 emphasize that there is an openness, and that unless you

1 participate, however, we don't have a way to knowing your
2 concerns.

3 So regardless how deficient we are, I really
4 believe that we are trying very, very hard to listen to all
5 concerned, and I encourage all groups to avail themselves of
6 the opportunity. And like somebody was saying, sometimes
7 the staff, you know, might filter something. This
8 Commission has been open to direct communications, and, you
9 know, if you feel that need, please use that fact that we
10 are open to it.

11 Second, I'd like to make a comment that I believe
12 this is a stakeholders meeting to enhance communications.
13 If we look at what transpired early in the process, Carl
14 discussed six different areas where multiple different
15 techniques were used for stakeholder participation. I
16 wonder how many people would pass a quiz on how many
17 different techniques were used.

18 Therefore, again I think it is important not only
19 for the staff and the Commission but for the stakeholders
20 that the staff reasonably soon captures what techniques were
21 good in what situations, and go ahead and establish, you
22 know, an optimization of what worked when, so we can use
23 them in the proper areas, in the proper time, so, you know,
24 we will not be rediscovering this at every time, not only in
25 NMSS but in different parts of the staff, the experience

1 will be valuable. I think it should be assessed, it should
2 be criticized, it should be documented, it should be
3 publicized for comments, and then we will have something
4 that is going forward.

5 Having been in training, I'd like to underscore
6 again the importance of training. I think a couple of years
7 ago I really tried very hard again to push for additional
8 training of the staff. We all realize that technical
9 competence does not assure competence in communications, and
10 also I think we realize that communication competence does
11 not assure accuracy. So it's a combination of both issues.
12 And we need to make sure that our people are trained and
13 they are put in the line of fire, they actually go through
14 the processes, because that's the only way you're going to
15 increase their competence.

16 And finally a question I think that is open is we
17 have heard a lot of things. And the bottom line, what do
18 you think is the most important thing regarding
19 communications? Is it that it be timely? Somebody was
20 commenting that it be accurate. Or is it that it be
21 transparent so people can participate? Is participation the
22 most important, you know, component? Is that the one that
23 should be the dominant issue? Should we always try to have
24 enhanced participation, or is that something that the
25 process already has built in? And I encourage your

1 responses.

2 MR. KAMPS: Okay. Well, I did mention a couple of
3 earlier cases where enhanced participation left the public
4 interest community and the environmental community feeling
5 really burned, and we feel that that same pattern is
6 continuing at the present time in regards to the release of
7 radioactive materials, for instance.

8 And another point I wanted to make is that I
9 really feel that the communities I'm talking about are
10 underrepresented on this panel today, for one thing, and
11 another pattern that seems to be taking place even today
12 that's happened time and again in Michigan, for instance, is
13 that the meeting is often dominated by the people at the
14 front of the room, and it's turned over to the people in the
15 rest of the room at the very end with very little time left,
16 after most people have already left in terms of the press or
17 even concerned citizens. And so I'm just -- I wonder if
18 even today if people from the public, people who were not
19 invited to sit on this panel are going to have an
20 opportunity to ask questions or make comments.

21 CHAIRMAN MESERVE: I'll respond to that. Somebody
22 did come up and ask me, and I had a microphone placed in the
23 audience that was not there before. We have a large number
24 of people that we had invited to participate here this
25 morning, and I indicated to that person that asked for time

1 that if we had time and allowed public comments, we would
2 certainly allow it, but I thought it would be rude to the
3 people we had invited and who had prepared for this meeting
4 if we didn't give them a full opportunity to air their
5 views. So I stated that it would be on a time-allowed
6 basis.

7 Let me say specifically, however, as well, that if
8 there is anyone in the audience and if we don't have time
9 for public comments that we will certainly provide an
10 opportunity for anybody to submit written comments that will
11 be part of the record of this proceeding, and which will be
12 something that we will evaluate as we see what we should
13 learn and what lessons we should draw from this meeting.

14 Are there others that have comment or response to
15 Mr. Diaz?

16 MR. KANE: Perhaps not a response. I want to make
17 a comment about the importance of the comments for this
18 public meeting that we're having today, and specifically as
19 we build out our strategic plan in the materials and waste
20 arena. I was curious about are there best practices out
21 there in government that we should be looking to that you
22 may all be aware of or any of you may be aware of that we
23 should be looking to as we build out our plan? I'd be very
24 interested in getting any kind of comments that we can
25 factor into our process in the coming months, because it's

1 really important to us to address the area of improving
2 public confidence.

3 Thank you.

4 MR. FLETCHER: Commissioner Diaz, I want to add a
5 different adjective, which is probably even more difficult
6 to define. Meaningful communications, because essentially
7 that's different things to different people. But I think
8 whenever a party is engaged in communications, two things
9 need to occur. They need to feel as though they have the
10 opportunity to express themselves, and they need to feel
11 that once expressed, their perspective is heard and
12 considered.

13 I think if that is accomplished then
14 communications has occurred, but that has to be a two-way
15 street. The privilege of speaking, being heard, and having
16 your position considered means that you do likewise to
17 whomever is speaking to you.

18 CHAIRMAN MESERVE: Dr. Ring?

19 DR. RING: I wanted to go back and make a comment
20 about Carl's description of public comment and response.

21 I think it is very easy for us to all acknowledge
22 that they do a great job of preparing that material. It is
23 not a question of whether or not you, quote, "respond" to
24 the comments that you get. It is a question of what do
25 people hear. If they don't hear it, it doesn't matter how

1 much work you have done, and I, myself, in my experience
2 have said that you guys do a great job, although I know how
3 to find the material.

4 Maybe one of the things that Carl brought up is
5 when you have forums, you say this is how we expect to
6 respond to these materials. If you want to see our public
7 response document it will be available on the website or you
8 can obtain it from us by doing "x" -- and that way people
9 know the expectations very clearly upfront.

10 One of the things that Mr. Kamps brought up is
11 that people don't know about the meetings and it is hard for
12 people who are not particularly plugged into our area to
13 find out about the meetings. One of the things that I have
14 done when I have been in a similar role within Massachusetts
15 is to make notifications to the local cable companies,
16 newspapers, public meeting forums, so that they can post
17 them on their systems if you are having a local meeting and
18 often that works.

19 I don't know if you have done that because I have
20 never seen an NRC meeting in my local area.

21 DR. PAPERIELLO: As I mentioned in my prepared
22 remarks, when we held public meetings in Nevada on Part 63
23 we did use multiple techniques, not just web. We posted
24 them several weeks in advance at the location where the
25 meeting was going to be held, and no, I agree with you. We

1 have learned that if you really want to get people to come
2 to a meeting you have to use multiple media to make that
3 information available. Yes, that is definitely a lessons
4 learned.

5 MR. ALLEN: I would say that on the Part 70, while
6 this is a very simply worded question, it gets very
7 complicated, but to try to give a simple answer the Part 70
8 actions where all of the industry was directly involved,
9 public included, we came together so we had participation.
10 The accuracy of the information -- the information was being
11 exchanged readily face-to-face in many cases, and that has
12 worked exceedingly well, and I think that has enabled us to
13 debate issues, to understand concerns.

14 I think where we have gotten sidetracked is
15 formality in terms of the formal process, whether or not it
16 permits disclosure of what the rulemaking or the standard
17 review plan is going to be in draft form. I think Dr.
18 Paperiello and Liz ten Eyck have tried to overcome that in
19 great part through a lot of open meetings but that gets to
20 be a concern, and so I think that goes to the point of in
21 terms of what we are dealing with timeliness, and I would
22 say that the one thing that at times we have suffered from
23 is moving the process forward in many cases too fast to
24 drive to an end date without resolving issues and trying to
25 issue the rule without the standard review plan, which

1 really is an unacceptable condition.

2 So I think in each case the examples that I have
3 heard mentioned today suffer from parts of the concerns that
4 you have brought up, but from a Part 70 standpoint I think
5 we have dealt well in overcoming a lot of the issues that
6 stymied us in the beginning. The first six years of a long
7 process were really not very fruitful. The last 18 months
8 have been very productive and I think they are good examples
9 for us to apply in the future.

10 COMMISSIONER DIAZ: So you are saying there has to
11 be a balance between how the participation is enhanced and
12 how timely it is, the document is, and that is a difficult
13 issue.

14 CHAIRMAN MESERVE: Mr. Scherer?

15 MR. SCHERER: Yes, I want to make the same point
16 in response to Commissioner Diaz's question and challenge.

17 Clearly in my mind there is no supremacy of
18 accuracy over timeliness or timeliness over accuracy, or
19 inclusion, but there is a balance that needs to be struck on
20 each issue, depending on the issue, and the need for clarity
21 and the need for timely response.

22 There is also the issue of formality and process
23 over content in that there still seems to be a reluctance on
24 the part of many at the Staff to discuss information that
25 might be pre-decisional. It is as if every discussion with

1 the Staff may in fact be going to a rulemaking or a full
2 adjudicatory hearing and there is a reluctance to discuss
3 with any candor some of the work that is still in process.
4 That results in extended schedules and unnecessarily
5 protracted periods where nobody is communicating because
6 each side is going back and working on its process.

7 It frustrates both sides and all the stakeholders
8 because there is very little communication as each party is
9 working in the confines of its own organization. I see that
10 for example some of the meetings that I have attended where
11 senior management has been there the exchange has been
12 significantly more fruitful, significantly better, and
13 significantly more productive, and they may leave that
14 morning and have other meetings and the discussion quickly
15 ceases in terms of material exchange of information and in
16 some cases when they have returned the exchange again
17 becomes fruitful.

18 Some of that you heard yesterday in the
19 decommissioning hearing in terms of why is it taking so long
20 to get resolution on some issues, but again I think those
21 are not legal requirements. Those are almost thought
22 processes that exist in the Staff that everything is somehow
23 heading to a full adjudicatory hearing, there is ex parte
24 communication on everything. Everything is pre-decisional
25 until it has been fully endorsed up and down the

1 organization, which frustrates our ability to communicate.

2 CHAIRMAN MESERVE: Let me turn now to Commissioner
3 McGaffigan for his comments and/or questions.

4 COMMISSIONER MCGAFFIGAN: I will just comment
5 briefly on the last point.

6 I think that we have made tremendous strides in
7 the last few years in holding less stuff pre-decisional. At
8 the moment as the Commission is voting on a variety of
9 papers, almost every paper we are voting on is in the public
10 domain and we have encouraged the Staff, maybe SRM by SRM,
11 to be open on some of these documents and we have seen
12 tremendous strides forward I think as a result of the Part
13 70 rulemaking.

14 It was mentioned that over the last 18 months, and
15 that really came up as a result of Commission direction,
16 there has been a much-improved process, but in all honesty I
17 once said Frank Miraglia took me to the woodshed. You know,
18 Frank Miraglia educated me after a reg info conference a
19 couple years ago that previous Commissions have given the
20 Staff previous guidance on this subject, which is you don't
21 have any thought until the Commission has blessed that
22 thought, and it has taken awhile, it takes awhile to move
23 from an old paradigm to a new paradigm where I think any
24 Staffer should feel free to interact, provided he says that
25 this is my own personal view and this may or may not -- if

1 it hasn't already been cleared at the EDO or the Commission
2 level it may not survive.

3 The issue I wanted to talk about is interaction
4 with the Commission itself. I notice Mr. Brown mentioned
5 the Commission overturning some ACMUI recommendations. I
6 believe we have been quite transparent. We do it in public.
7 We have public meetings with ACMUI. We disagree with them
8 in public and then we write our votes in public. We all
9 have voting records.

10 But if that isn't enough, I am happy -- I know I
11 have an open door policy, I think every Commissioner does,
12 to further explain why we overturn ACMUI or why we are
13 pursuing generic -- orphan sources, or whatever, when we
14 make a change of direction from the Staff.

15 I do think Carl was right that when it is a formal
16 process we do a great job of dealing with comments. There
17 was somebody from Mallinkrodt at one of the public meetings
18 in this room on Part 35 mentioned, you know, he made a
19 comment with regard to assaying unit doses and whether we
20 were doing the right thing in the draft Part 35. Well, I
21 went and found it. It's in there, his comment, and how it
22 was dealt with, even though it is way down in the comment.
23 It is in that nine inch -- I think it is actually three and
24 a half inches -- double-sided package that we have before us
25 at the moment, but I would be interested in ways we could

1 improve the Commissioners' interaction with the public.

2 With regard to Mr. Kamps, you know, West Valley --
3 Diane D'Arrigo and Ray Vaughn were in my office earlier this
4 year and I believe that the West Valley policy statement
5 that we arrived at after a year's deliberation is responsive
6 to the people there, so something worked right in that case.
7 Maybe it is just because we came to the answer that Ray
8 Vaughn and the West Valley Coalition wanted, but we have
9 open processes.

10 We meet with people. We perhaps can be even more
11 transparent. I remember on the decommissioning rule that
12 you criticized us on, we were transparent from the fall of
13 '96 to the May of '97 we did the decommissioning rule. We
14 were entirely transparent. The paper was out there while we
15 were voting on it. We had a public meeting where Ramona
16 Travota came over here in the ACRS meeting room, met with
17 us. Our votes, which go on, mine was five pages -- I think
18 every Commissioner's was that length, were available.

19 We were available to talk. It was a very
20 transparent process. It was not what some public
21 stakeholders wanted but that was because the generic
22 Environmental Impact Statement and the NUREG summarizing the
23 comments didn't support some of the positions that you took,
24 in my view.

25 I would be interested -- we are Commissioners, we

1 do make changes. We do disagree with ACMUI. We will
2 disagree with the Staff. We will disagree with lots of
3 folks. We all have voting records. We all have open door
4 policies. But if there is something more we need to do as
5 Commissioners to communicate, I would be interested.

6 MR. HERNANDEZ: If I may respond to Commissioner
7 Diaz with an analogy. In manufacturing we have learned that
8 productivity, quality, and safety are inter-related and you
9 can't have one without the other, and so I would suggest
10 that each of the items that you mentioned in communication
11 are critical components, as well as Roland's suggestion for
12 meaningfulness.

13 CHAIRMAN MESERVE: Let me turn to Commissioner
14 Merrifield -- oh, is there a comment?

15 MR. ALLEN: There is a comment.

16 CHAIRMAN MESERVE: Oh -- I didn't see anyone
17 raising a hand. I'm sorry.

18 MR. ALLEN: Commissioner McGaffigan's comment
19 spurred something and again I want to go back and reinforce
20 that I have been in my job slightly over two years, as the
21 leader at the Westinghouse facility and have had at least
22 four meetings with the Commissioners and more with the Staff
23 and I would say that the preparedness of the Commissioners
24 for the meetings, for the issues that we have dealt with on
25 Part 70 has been excellent, and so I'd go to the point that

1 the open door policies and the discussions that we have had
2 with the NRC Commissioners, with the Staff have been a very
3 productive process and I would only encourage that that
4 continues, and again I feel blessed that I am a part of a
5 10-facility industry, so that is pretty unique, but we have
6 been able to take advantage of it and the preparedness has
7 been outstanding.

8 CHAIRMAN MESERVE: Thank you.

9 COMMISSIONER MERRIFIELD: Mr. Chairman,
10 unfortunately I have got to leave in a minute, as I have got
11 another meeting that was scheduled, but I do want to follow
12 up on Commissioner McGaffigan's comments and reinforce those
13 just a little bit, although I agree with virtually
14 everything he said.

15 I think that what we have right now and have had
16 for a while, even before I got here, is one of the most
17 committed and hands-on Commissions that this Agency has had
18 for a long time, if ever.

19 Much to the chagrin and frustration of the staff
20 sometimes, these Commissioners frequently seek information
21 well down the chain of command, to become more informed
22 about what we are doing and how we are to make our decisions
23 as Commissioners. What that results in sometimes is our
24 reversing recommendations made by our staff. Sometimes that
25 results in our reversing recommendations made by ECMUI or by

1 experts who come before us.

2 Speaking for myself, we were nominated by the
3 President and confirmed by the United States Senate for the
4 purpose of rendering impartial decisions based on the
5 information available to us from whatever source. And I
6 think this Commission has really committed itself to
7 fulfilling that mandate of the President and of the Senate
8 in that regard. As a result of that, there are times where
9 licensees are not happy with the decisions we come down to,
10 but those are the lumps that certainly we have to take.

11 But I agree with Commissioner McGaffigan. As you
12 all go back to your offices, I certainly look for other
13 opportunities to interact with you and others in our
14 stakeholder community so that we can have the best-informed
15 decisions. And if there are ways in which we as
16 Commissioners individually or collectively can get better
17 access to that information, certainly I'm very open to
18 suggestions that people may have in that regard.

19 Roy?

20 MR. BROWN: Just one brief comment. I might have
21 been filled with negative comments here today. I did want
22 to make a positive comment. I do have to agree with what
23 Commissioner McGaffigan and Commissioner Merrifield said. I
24 think the communication that at least our side of the
25 industry has had with the staff and with the Commissioners

1 themselves has improved dramatically over the last few
2 years. So I did want to make that point, and I appreciate
3 and acknowledge that openness.

4 CHAIRMAN MESERVE: Thank you very much.

5 There was one person who had asked for an
6 opportunity to make a brief statement, and her name is Amy
7 Shollenberger, and she's with Public Citizen. Is she still
8 in the audience? If she would choose to make a very brief
9 statement, we'd allow that.

10 MS. SHOLLENBERGER: First, thanks for the
11 opportunity to speak.

12 I just wanted to follow up on something that Kevin
13 Kamps pointed out. I think it's really great that you guys
14 are looking for input on how to improve your public
15 participation process. However, I'm not entirely convinced
16 that you're sincere in your efforts. Public Citizen asked
17 to be allowed to sit at the table at this meeting, and we
18 were refused access to this table. And so because of that,
19 we had to wait until the end, after everyone else had
20 spoken, in order to say anything at all.

21 The justification for us having to wait was so
22 that the people sitting at the table wouldn't feel offended.
23 And I think that's really telling, that you're not at all
24 worried about offending members of the public who have been
25 waiting three hours to speak, but you're worried about

1 offending people who had special invitations to come and
2 tell you what they thought. And most of those people are
3 members of the industry, and not members of the public or
4 people representing the public.

5 So that's the first thing I'd like to say.

6 Secondly I'd like to make a comment about what's
7 going on with your discussions about how to better use the
8 Internet. I have a master's degree in technical and
9 scientific communication. I'm highly trained in how to use
10 the Internet, as well as Web site design and how people use
11 the Internet.

12 Less than 30 percent of American citizens have
13 access to the Internet, and so I think it's really great
14 that you're thinking about making your process more
15 transparent, posting stuff on the Web site, allowing people
16 better access to it, but I would really caution you in
17 believing that, doing that, is solving your problem. I
18 think it solves the problem for people in the industry who
19 have access to the Web. I think it even helps public
20 interest groups like Public Citizen who have good resources
21 and access to get that information. However, I think for
22 members of the general public, it's a farce to believe that
23 putting your documents on the Web site is really helping
24 them in any significant way.

25 Along with that, I would like to point out,

1 following up on something that Dr. Ring said, on your Web
2 site the posting for this meeting stated that this meeting
3 was going to be held in the Commissioners' conference room
4 in a different building, not in this auditorium. And so I
5 spent 15 minutes trying to find the meeting, not to even
6 mention the fact that the signs don't lead to the
7 auditorium. And so that's, you know, that's just an added
8 layer of how do you get to participate in these meetings.

9 I'd also suggest that if you are looking to really
10 help people have better access in navigation capabilities on
11 your Web site, that you would look to the EPA Web site. The
12 EPA has done a tremendous job of hiring technical
13 communicators and Web site designers. They did several
14 usability studies, and their Web site is very navigable, and
15 you can find pretty -- information pretty easily that's
16 buried pretty deeply on their Web site.

17 Also the Thomas Web site that the Federal
18 Government has by the Library of Congress that posts all the
19 different bills and voting records and stuff is pretty easy
20 to use, and I would suggest that you look at that site as
21 well.

22 That's basically all I have to say. I think that
23 the idea that you have is a very good one to listen to
24 stakeholders to make your process more transparent. I think
25 it would really benefit you to take a hard look at how

1 honest you're being with yourselves about how willing you
2 really are to do that.

3 Thank you.

4 CHAIRMAN MESERVE: Thank you very much.

5 Let me clear up one point of confusion possibly.
6 I think that all of the Commission representatives here at
7 the table do not view the Web site as the sole means by
8 which we will ever communicate with the public or with
9 anyone, that this is one among many tools. It's one that we
10 need to learn about, because this is obviously evolving
11 technology. It's an opportunity that we don't want to
12 foreclose, but that's not to say that it would be exclusive.
13 And I can't respond to your comments about the invitation,
14 and I don't believe any of the Commissioners were involved
15 in that.

16 I think we've come to the end of the appointed
17 time. I would like to thank everyone who's participated in
18 this session and those in the audience who have been patient
19 and participated as well through listening, and that we will
20 welcome written comments from any of you, and that we've run
21 to the end of the allotted time, and we'll consider them.

22 This has been very helpful for me. I'm in my
23 early stages here at the Commission, and I am aware of some
24 of the processes that Dr. Paperiello mentioned, because I
25 had -- as an outsider I had participated in some of them.

1 Others I was not familiar with. And this was a very, very
2 helpful session for me in getting up to speed on the things
3 we've done, but also extraordinarily helpful in the
4 recommendations and suggestions that people have made.
5 We'll take them in mind.

6 So thank you very much, and we are now adjourned.

7 [Whereupon, at 12:07 p.m., the meeting was
8 concluded.]

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CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: MEETING ON NRC STAFF INTERACTIONS WITH
STAKEHOLDERS ON NUCLEAR MATERIALS AND
WASTE ACTIVITIES
PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Tuesday, November 9, 1999

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Rose Gershon

Reporter: Mark Mahoney

Nuclear Information and Resource Service

1424 16th Street NW, #404, Washington, DC 20036

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November 5, 1999

Chairman Meserve and the Commissioners
US Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemaking and Adjudications staff
<http://www.nrc.gov>

RE: Request for Extension of Comment Deadline on 10 CFR 20 **Release of Solid Materials at Licensed Facilities: Scoping Process for Environmental Issues** (64 FR 125, 35090-35100; 6/30/99; 64 FR 201, 56274 Proposed Rules)

Dear Chairman Meserve and Commissioners Dicus, Diaz, Merrifield and McGaffigan:

This is a request for an 8-month extension on the comment period for the Scoping for the Environmental Impact Statement for the "proposed" rulemaking on the Release of Solid Materials at Licensed Facilities.

The public interest and environmental communities have been doubly frustrated with the content and the process of the rulemaking to release radioactive wastes and materials. Although the notice of rulemaking was published in June 1999, all of the public interest organizations originally contacted by NRC and its contractor, made it clear that we want NRC to regulate by isolating and not releasing radioactive wastes and materials into the marketplace and that sufficient time is needed to allow members of the public to participate. We, after being asked what would enable us to participate in the process, stated that we would meet to explore how to regulate (rather than deregulate or release or clear) radioactive materials and that we would need three weeks from the finalization of an agreed upon agenda to arrange to participate in a meaningful way. Neither of these conditions was met despite extensive, persistent efforts from the consultant and the groups contacted to come up with common ground.

It was not until two weeks (barely) before the San Francisco and Atlanta meetings that the decisions were made to proceed with the meetings and the agendas of all 3 meetings thus far have not been clear in advance, nor do they appear to present a meaningful option to prevent radioactive releases. The sense of being ignored persists. This public call for isolation, not release, is not new to the Commission; it has been clearly expressed in many ways to the NRC over many years.

In addition, despite the Commission issuing a new Staff Requirements Memo, the directive to staff to set levels above background that allow quantities of material to be released has not changed from the June 1998 SRM.

In light of the fact that this is the legal Scoping period (under the National Environmental Policy Act) for a rule, we ask that the public comment period be extended by at least 8 months, if the NRC truly desires public input. The fact is that the same meetings and comment period that comprise "considering" a rule are simultaneous with the legally-required Scoping process for the Environmental Assessment or Impact Statement necessary for making a rule. The clear impression exists that many decisions have been made already. Whether or not that is true, speeding through the Scoping without real public knowledge and opportunity is unacceptable.

Given the history of NRC's interaction with the public on this and related issues (dating back to the adoption of the 'new' Part 20 in the early 1990's, the 1986 and 1990 BRC policies, and the Enhanced Rulemaking On Residual Radioactivity or ERORR process that preceded the controversial 1997 decommissioning rule) it is clear that there is very high level of public interest and strong opinions. The public has a right to be heard and to have its views bear weight.

We ask for 8 months because the decision to release at any level is irreversible and needs general public awareness, which the process thus far has not facilitated. Those who might receive exposures need time to learn, understand and formulate comments.

Because there are major holidays and the turn of the millennium, with its potential for disruption and delay, a extra month or two is not sufficient on such an important issue. Please consider this request for an eight-month extension, the importance of public input on this rulemaking process.

If you have any questions or need clarifications please contact us.

Sincerely,

Diane D'Arrigo
Nuclear Information and Resource Service
202 328-0002 ext. 2

Wenonah Hauter
Public Citizen
202 546-4996

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Statement prepared for NRC Commissioners Stakeholder Meeting, 11/9/99
By Kevin Kamps, nuclear waste specialist

I regret to inform you that concerned citizens, consumer and ratepayers advocates, and public interest and environmental organizations across the United States regard the NRC with growing distrust, skepticism, and outrage. This is based on the NRC's poor performance in protecting public health and safety and the environment from the dire threats posed by the nuclear power industry, as well as the NRC's purposeful evisceration of any meaningful public involvement in its decision-making.

From dry cask storage to decommissioning, from high level radioactive waste disposal to the proposed release of radioactively contaminated materials, NRC has created the illusion of public involvement, while locking the public out of any real role in decision-making.

Take the precedent-setting dry cask storage at Palisades nuclear plant in Michigan – a good example of the NRC serving as the lubricant for the nuclear power industry, at the expense of genuine public involvement. NRC's first ever generic licensing of dry cask storage has made it impossible for the public to intervene to protect public health, public safety, and the environment. Adjudicatory public hearings are denied. Environmental Impact Statements are circumvented. Thus blocked by NRC, the public was forced to file for an injunction in federal court against the loading of the casks at Palisades in 1993. To avert the injunction, Consumers Power Company and NRC officials perjured themselves before the judge, promising that if problems developed, casks could and would be promptly and safely unloaded by simply reversing the loading procedure. The fourth cask loaded in the summer of 1994 proved defective. Forced to acknowledge serious technical obstacles that prevent safe unloading, Consumers Energy has still not unloaded that cask, more than 5 years later. The Court of Appeals decision instructed the concerned citizens to address their concerns to the NRC via the 2.206 petition process. But the NRC routinely rejects these petitions, and is not required to respond to them in a timely fashion. The NRC sat on the Palisades dry cask petition for 18 months before finally rejecting it. All the while, Consumers Power proceeded to load 9 more casks, despite the unresolved concerns. Once the petition was rejected, concerned citizens were left with no further recourse. The illusion of public involvement via this petition process has grown rather thin.

The NRC's summer 1997 rubber stamping of the secretive, yet-to-be-demonstrated unloading procedure at Palisades, and NRC's servile handling of the suspicious dry cask storage office fire following the hydrogen burns in June, 1999, has further driven home the lesson that the NRC and Consumers Energy are unaccountable to the public. The token public meetings conducted answered no questions, raised troubling new ones and served merely to intensify public concern and outrage about the suspicious and disconcerting goings-on at Palisades.

Similarly, NRC allows decommissioning to proceed under a plant's general operating license, through a series of amendments rather than a regulatory process, as if dismantling and dumping highly contaminated materials is just another run of the mill maintenance activity. NRC's thumbs up to industry's fly-by-night decommissioning shams allows the nuclear utilities to save money by increasing harmful worker and public exposures to radioactivity, with untold health consequences in the future. Adding insult to injury, NRC agreed to concerned citizens' request for a hearing on the

decommissioning of the Fermi 1 nuclear plant in Monroe, Michigan – but not until the year 2025, long after the fact, with no meaningful way to effect the outcome. The NRC says it wants public involvement – but actions speak much louder than words.

In the early 1990's, environmental groups, public interest organizations, and Native American tribes entered into a negotiated regulatory rule-making process with NRC on the flow of information to the public about disposing high level wastes at Yucca Mountain, Nevada. Meetings were held every few months over a couple year period. The negotiated regulatory rule was published in the Federal Register. This rule was subsequently rejected by NRC, and replaced with a worse rule – from the public's perspective – than had ever been brought to the table during the participatory process. Thus betrayed, these public groups refused to participate any longer, and the process fell apart. Not a good basis for public trust as NRC enters into the Yucca Mountain licensing process. Yet this pattern of public betrayal has continued up to today.

It's interesting to note the connection between the enhanced participatory rule-making on residual radioactivity in 1993 which led to the NRC's 1997 decommissioning rule, and the NRC's present attempt at "consensus-building" on a radioactive release rule.

The NRC's 1997 decommissioning rule – which gutted meaningful citizen advisory groups, allows for the same or higher exposures to radiation from a closed than from an operating nuclear power plant, and does not protect groundwater to EPA standards – was much worse in the eyes of concerned citizens, public interest groups and environmental organizations than anything the NRC brought to the table during the so-called participatory process. To put it simply, NRC betrayed the public's trust.

Now, the NRC and the very same contractor involved in that previous betrayal are seeking to "build consensus" on a radioactive release rule. You must forgive us for being distrustful, but once bitten, twice shy. The public interest and environmental communities have made clear in many ways over many years their position that radioactive materials must be isolated, not released into the marketplace. Yet the sense of being ignored by NRC persists. The three supposed public participatory meetings held thus far have not appeared to present a meaningful option for preventing radioactive releases. The clear impression exists that many decisions have already been made. Why would our organizations take part in token exercises, chasing after the illusion of public participation, when NRC has already predetermined its decisions? If the NRC truly desires public input, we call for at least an 8 month extension of the public comment period. Rushing through the Scoping without real public knowledge and opportunity is unacceptable.

In conclusion, unless NRC opens up to genuine public involvement in decision-making, its image will worsen as an illegitimate, rogue agency doing the bidding of the nuclear industry at the expense of public health and safety, the environment, and democracy.



Stan Marshall, Chair

Roland G. Fletcher, Past-Chair

Organization of Agreement States

Edgar Bailey, Chair-Elect

Richard Ratliff, Secretary

USNRC & AGREEMENT STATE
INTERACTIONS WITH STAKEHOLDERS
ON
NUCLEAR MATERIALS AND WASTE ACTIVITIES

Presented by:

Roland G. Fletcher – Maryland Radiation Program Manager
And
PASTCHAIRMAN, ORGANIZATION OF THE AGREEMENT STATES

November 9, 1999

NRC Commission Discussion – November 9, 1999

SUBJECT: INTERACTIONS WITH STAKEHOLDERS

I. AGREEMENT STATE PROGRAM MANAGER UNDER THE PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954.

1. Amended 1959 by Sect. 274, "Cooperation with States".
2. Training and other assistance, not cash grants.
3. Discontinuance of federal authority over byproduct material licensing and compliance.

II. STATE APPEAL.

1. New regulatory authority.
2. Enhanced regulation of NORM and x-ray .
3. Valuable no-cost high quality training for health physics staff.
4. Mutual maintenance of compatibility.
5. Kentucky -- 1st in 1962

III. ENERGY REORGANIZATION ACT OF 1978:

1. AEC becomes the NRC.
2. NRC performs formal state program evaluations.
3. OSP created to centralize Agreement State activities.

IV. DEVELOPING AND STRENGTHENING A PARTNERSHIP:

1. Annual Agreement State Meetings Held.
2. Organization of Agreement States (OAS) Established.
3. Commission Briefings/Staff Directives
4. Working Groups & Committees
5. IMPEP and MRB
6. Ohio - 31st Agreement State in 1999.

V. CURRENT ISSUES

1. Sponsored Training.
2. NRC Terminated Licenses.
3. Regulation of DOE
4. Generally Licensed Devices
5. OAS Workgroup Participation.
6. NRC-OAS Monthly Teleconferences.

Communication from a By-Product-Licensee Point of View Joseph Ring

Poor Communication leads to: **distrust** and **misunderstanding**

Observations about NRC:

- Interested in '*doing the right thing*'
- Too '*process oriented*'
- Legalistic and reluctant to communicate
- Inconsistent implementation
- Appears not to consider requested input

Recommendations for NRC:

- Use '*push-out technology*'
 - Multiple list servers by type/content
 - Use lists servers to discuss an issue
 - Design Web system from a users' view
- Extend comment period
- Respond to commenters
- Regional and facilitated meetings
 - More discussion between parties
 - Break-out sessions may help
- Acknowledge difference of opinion
 - Need to tell it like it is
 - Correct inaccurate statements

NRC STAKEHOLDER INTERACTIONS

NOVEMBER 9, 1999

JACK B. ALLEN

WESTINGHOUSE COLUMBIA PLANT
MANAGER

COMMUNICATIONS LINKS ARE OPEN BETWEEN NRC AND THE FUEL FABRICATION INDUSTRY

- Thank you for hosting this stakeholder forum
- NEI, Westinghouse and all other fabricators regularly meet with NRC Commissioners and Staff
- Industry meetings force discussions common to all fuel facilities therefore adding structure
- Industry will continue proactive leadership which is important with events such as Tokaimura

10CFR70 REVISION INTERACTIONS REPRESENT THE SPECTRUM OF COMMUNICATIONS WITH NRC

- Process was initiated over seven years ago and was very ineffective due to poor interactions--combative
- Over past 18 months the dedicated NRC team and Industry have worked effectively on draft and then formal revisions--open debate and compromise
- Process included changes before the formal submittal for docket for both rule and review plan
- Burden of changes shared by Industry and NRC

APPLY LESSONS LEARNED FROM 10CFR70 PROCESS TO THE FUTURE

- Start with dedicated teams using interactive approach in advance of the formal process
- Establish schedules and joint expectations to allow adequate time to review, debate and rewrite
- Continue toward “risk informed, performance based” and away from “prescriptive” regulations
- Extend use of the Internet !!!
- Apply lessons-learned to emerging transportation issues -- IAEA’s ST-1 and 10CFR71
- Continue meetings between Industry and NRC

CONCERNS OF NUCLEAR MEDICINE COMMUNITY

- **Stakeholder involvement encourages good rulemaking**
 - **Provides opportunity for expert advice from industry**
 - **Provides opportunity for environmental community**
 - **All players must be at the table**



Council on Radionuclides and Radiopharmaceuticals, Inc.

CONCERNS OF NUCLEAR MEDICINE COMMUNITY

- **NRC's process good, but often falls short**
 - **Experts often more knowledgeable than staff**
 - **Expert advice not always followed**
 - **Often no explanation is offered**
 - **Discourages future stakeholder involvement**
 - **ACMUI recommendations accepted by staff,
rejected by Commissioners**

CONCERNS OF NUCLEAR MEDICINE COMMUNITY

- **Nuclear medicine community has been involved in several enhanced participatory rulemakings**
 - **Price-Anderson - late '80s**
 - **Strategic Assessment & Rebaselining - 1996**
 - **Revisions to Part 35 - 1998-1999**
- **Discussions were beneficial, most stakeholders present**
- **Felt our concerns were not considered**



Council on Radionuclides and Radiopharmaceuticals, Inc.



NMSS Stakeholder Interaction

Carl J. Paperiello
Deputy Executive Director for Materials,
Research, and State Programs

Purpose

- Feedback from stakeholders on communication processes
- How NRC solicits stakeholder input
- How NRC responds to stakeholder input
- How improvements can be made

Scope of Issues

- Part 33.....Broad Scope Materials
- Enhanced Control of Generally Licensed Sources
- Part 70.....Special Nuclear Material Licensing
- Part 63.....High Level Waste
- Decommissioning and Dry Cask Storage
- Part 40.....Source Material

Part 33 - Broad Scope Licenses

- Radiation Safety Committee and RSO responsibilities
- Advanced Notice of Proposed Rulemaking (*Federal Register* 1996)
- Public Workshops
 - ▶ The NRC, in partnership with the State of Illinois, developed draft rule language
- Rulemaking effort for Part 33 was terminated (March 1998)
- Increased Flexibility License Condition Option

Enhanced Control of Generally Licensed Sources

- Published the proposed rule changes for public comment (comment period ended 10/99)
- Conducted an Agreement State Workshop
 - ▶ Purpose: to seek insight from experienced State regulators
- Conducted a Public Workshop
 - ▶ Purpose: to discuss implementation with manufacturers, distributors, and users
- Effective in gaining a perspective of the Agreement States, and from a national perspective

Part 70 - Domestic Licensing of Special Nuclear Material

- The staff used several methods to seek public participation
 - ▶ Documents posted on a web site
 - ▶ Parties notified by e-mail of new documents or public meetings
 - ▶ Three public meetings
 - ▶ Requests for comments for the proposed rule in the Federal Register Notice

Part 70 (continued)

- Dedicated website with public meetings was efficient and effective
 - ▶ The website allows information to be available to stakeholders on a continuing basis
 - ▶ Facilitates communications in preparation for public meetings
- Feedback

High-Level Waste Proposed 10 CFR Part 63

- A broad-based, multi-source approach to involving public
 - ▶ Five public meetings
 - ▶ FRN noticing meetings
 - ▶ Contacted directly State, county, and tribes
 - ▶ Displayed announcement at meeting locations
 - ▶ Met with newspaper editors and reporters
 - ▶ Newspaper ads
 - ▶ Listing meetings on NRC web site
 - ▶ Comment forms
 - ▶ Developed listing of participants that wanted copy of transcripts

Part 63 (continued)

- Video-teleconferencing
- Lessons Learned

Decommissioning Guidance

- Methods
 - ▶ Public workshops
 - ▶ Publication of documents on website
 - ▶ Submission of questions via website
- Feedback
 - ▶ Workshops
 - Allow realtime interactive exchange
 - Offer convenient path for question submission
 - Are effective
 - ▶ Website
 - Allows efficient distribution of documents to wide audience
 - Website access

Summary

- Communications initiatives have produced changes
- Lessons learned
 - ▶ Outreach
 - ▶ Technological changes
 - ▶ Communication training
 - ▶ Effective use of resources

ACNP/SNM

American College of Nuclear Physicians/Society of Nuclear Medicine

GOVERNMENT RELATIONS OFFICE

This comment is submitted by the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) in response to Federal Register 64 #207 p57909, request for participation (comment) in a public meeting. ACNP and SNM are professional organizations that represent over 12,000 practicing nuclear medicine health care providers, including nuclear medicine physicians, nuclear pharmacists, nuclear medicine technologists, nuclear and medical physicists, radiochemists, radiation biologists and other scientific specialists associated with our field. Our members provide quality nuclear medicine diagnostic and therapeutic services, as well as perform research and development in nuclear medicine

The American College of Nuclear Physicians and the Society of Nuclear Medicine are pleased that the NRC is attempting to refine its policy of early stakeholder involvement in the development of regulations. The process of stakeholder involvement (written comments, facilitated public meetings, and the use of "straw men" as discussion focal points) serves to make NRC staff aware of the scope of the issue under consideration for regulation. NRC staff can also hear first hand how the stakeholders view proposed solutions to the issues under consideration. As well, the stakeholders often provide expert advice on how to formulate regulatory policy. Given this, the American College of Nuclear Physicians and the Society of Nuclear Medicine strongly support significant early stakeholder involvement in the development of regulations.

The American College of Nuclear Physicians and the Society of Nuclear Medicine have considerable recent experience with the NRC in the area of early stakeholder involvement. The American College of Nuclear Physicians and the Society of Nuclear Medicine suggest that the Commissioners directly consider the expert advice of the stakeholders themselves, and compare this advice with the recommendations of staff. By doing so, the Commission can insure that the stakeholders' advice is given serious consideration by staff. All too often in the past, staff has not included stakeholder expert advice in the regulatory plan as an option, and thus it has not been available to the Commissioners as an alternate regulatory mechanism. This is particularly frustrating when staff has acknowledged the veracity of the stakeholder advice, yet without compelling reason, has taken another regulatory pathway. Such staff actions without appropriate scientific rationale and Commissioner-level consideration, only serve to discourage future early stakeholder involvement, and to negate the original intent of the early stakeholder involvement policy.