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NUCLEAR REGULATORY COMMISSION

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NUCLEAR REGULATORY COMMISSION

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BRIEFING ON GOVERNORS' CERTIFICATION OF
LOW LEVEL WASTE SITES

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Wednesday, January 17, 1990

The Commission met in open session, pursuant
to notice, at 10:00 a.m., Kenneth M. Carr, Chairman,
presiding.

COMMISSIONERS PRESENT:

KENNETH M. CARR, Chairman of the Commission
THOMAS M. ROBERTS, Commissioner
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

ROBERT BERNERO, Director of Operations, NMSS

PAUL LOHAUS, NMSS/LLOB, Branch Chief

RICHARD BANGART, NMSS/LLWM

LARRY CAMPER, NMSS

FRED COMBS, Acting A/D for State, Local and Indian
Relations

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

10:00 a.m.

CHAIRMAN CARR: Good morning, ladies and gentlemen.

The Low Level Radioactive Waste Policy Amendments Act of 1985 established a framework of milestones and incentives for state development of new low level waste disposal facilities. The purpose of today's briefing is for the staff to provide a status report to the Commission on state compliance with the January 1, 1990 milestone of the Act.

Although NRC is only responsible for transmitting the certifications required by the Act to the Congress and publishing them in the *Federal Register*, the certifications provide the Commission an opportunity to review the progress of the states in developing the next generation of low level waste facilities.

Briefing slides are available at the entrance to the meeting room.

Do any of my fellow Commissioners have any opening comments?

If not, please proceed, Mr. Taylor.

MR. TAYLOR: Good morning, sir. With me at the table to my right are Fred Combs from the Office

1 of State Programs; Dick Bangart who's the Division
2 Director responsible for Low Level Waste; Bob Bernero,
3 the Ops. Director for NMSS; and to my immediate left,
4 Paul Lohaus who is the Branch Chief responsible for
5 this area, and the principal discussor today; and to
6 his left Larry Camper who is the Project Manager for
7 this certification activity.

8 This is essentially a status overview and at
9 that point I will turn to Paul Lohaus, who will be the
10 principal briefer.

11 MR. LOHAUS: Thank you.

12 (Slide) May I have the second chart of our
13 briefing charts, please?

14 We'll cover four areas today. The first
15 will be to present background information on the Low
16 Level Radioactive Waste Policy Amendments Act and
17 discuss guidance that NRC issued earlier this year on
18 governors' certifications.

19 Second, we'll review and present a summary
20 of the certifications received and review the steps
21 followed by staff in their handling and processing.
22 These steps, as approved by the Commission in SECY-88-
23 342, carefully implement NRC's narrowly defined role
24 under the Act to receive the certifications, transmit
25 them to Congress and to publish them in the *Federal*

1 *Register.*

2 Finally, with NRC processing nearly
3 completed, we'll look beyond the certifications
4 themselves to identify programmatic issues which will
5 be of significance to NRC as the states move forward
6 to implement actions set out in the certifications.

7 (Slide) May I have the third chart, please?

8 The Low Level Radioactive Waste Policy
9 Amendments Act was passed in 1985 and reaffirmed an
10 earlier 1980 Low Level Waste Policy Act provision that
11 the states are responsible to provide disposal
12 capacity for low level waste, either individually or
13 through the formation of compacts.

14 The Act ensures that states without sites
15 will have disposal capacity available to them through
16 the end of 1992 at the existing facilities provided
17 they show continued progress in the development of new
18 sites. The Act establishes specific milestones to
19 track progress and states which do not keep pace are
20 subject to penalties in the form of surcharges, the
21 loss of surcharge rebates and ultimately a denial of
22 access to the existing facilities.

23 (Slide) May I have the next chart, please?

24 The next page of the handout is a map which
25 shows the current status of the states and compacts.

1 It includes a lot of detail for reference. I'd like
2 to highlight several points.

3 Currently 43 states are affiliated with nine
4 compacts. Seven states, the District of Columbia and
5 Puerto Rico have not joined a compact and remain
6 unaffiliated. It's a developing process. All
7 compacts have selected a host state. Sites have been
8 selected in California for the southwest compact and
9 Nebraska for the central interstate compact.
10 Preferred sites have also been selected in several
11 other states. An application for the California site
12 has been prepared and is presently under review in the
13 California Department of Public Health.

14 (Slide) The next chart, please.

15 In looking at the specific milestones set
16 out in the Act, two of the milestones occurred
17 earlier, in 1986 and 1988. All states did meet the
18 1986 milestone. Two states, New Hampshire and
19 Vermont, and Puerto Rico did not meet the 1988
20 milestone and were subsequently denied access from the
21 existing facilities by the three sited states.

22 In addition to the 1990 milestone, there are
23 three additional milestones which will lead to the
24 states having to take title and possession of waste in
25 1996. The Act and the intent that was set out was

1 that by 1993 new sites would be in operation. This
2 action can be delayed by three years, however, but in
3 1996 the states have no choice. Under the Act they
4 must either provide for disposal or they're
5 responsible for providing and taking possession and
6 title to waste.

7 (Slide) Next chart, please.

8 This chart graphically shows the surcharges
9 which are set out in the Act. These are paid by
10 generators in the non-sited states and compacts to the
11 sited states on each cubic foot of waste shipped for
12 disposal. As shown, they escalate, doubling after
13 each major milestone. A portion of the funds is
14 maintained by DOE and refunded back to the states in
15 the form of surcharge rebates when they successfully
16 meet each milestone.

17 COMMISSIONER REMICK: That rebate, does it
18 go back to the state where it's proposed to have a new
19 site or does it go back to each of the states in the
20 compact and are there any restrictions on the use of
21 that rebate?

22 MR. LOHAUS: It goes back either to the
23 state -- for example, in the case of Texas, an
24 unaffiliated state, it would go directly back to the
25 state. In the case of a compact, it would go back to

1 the compact. The Act does establish specific
2 provisions that the funds be used to develop new
3 disposal capacity.

4 COMMISSIONER REMICK: So, when you say the
5 compact, it doesn't go back to the individual states
6 in the compact, but the compact is an organization?

7 MR. LOHAUS: That's my understanding, yes.

8 COMMISSIONER REMICK: Okay.

9 MR. LOHAUS: To provide some perspective on
10 the leverage of these fees, the \$40.00 surcharge which
11 begins in 1990 is essentially equivalent to the
12 current average per cubic foot disposal cost for a
13 reactor. Thus, for an average reactor which would
14 generate about 8,000 to 10,000 cubic feet of waste a
15 year, the annual surcharge costs could approach
16 \$400,000.00 a year.

17 The Act also provides for the doubling,
18 tripling and quadrupling of these surcharges for
19 states and compacts which do not meet particular
20 milestones. Such escalated surcharges would be in
21 effect for a short period of time and would ultimately
22 be followed by denial of access.

23 CHAIRMAN CARR: But the surcharge is levied
24 on the generator rather than on the state?

25 MR. LOHAUS: Yes.

1 (Slide) May I have the next chart, please?

2 I'd now like to turn and talk a little bit
3 more about the 1990 milestone. The key elements of
4 this milestone are that by January 1 of 1990, each
5 non-sited state and compact shall either file a
6 complete license application or provide a written
7 certification signed by the governor describing the
8 actions the state will take to manage waste until new
9 disposal capacity becomes available. The sited states
10 of South Carolina, Nevada and Washington, and those
11 states which are affiliated in a compact with them,
12 are not subject to the milestone.

13 (Slide) May I have the next chart, please?

14 This chart shows the actual wording from the
15 Act, with added emphasis to show the substantial
16 content of the certification that's required by the
17 Act. The key elements have been underlined in the
18 quotation.

19 (Slide) Have the next chart, please?

20 NRC's role under the Act is limited. NRC is
21 directed to serve as a central receiving point for the
22 certifications and to take subsequent actions to
23 transmit any certifications received to Congress and
24 to make them publicly available through publication in
25 the *Federal Register*.

1 COMMISSIONER REMICK: Who has the
2 responsibility to make sure the certification is
3 adequate?

4 MR. LOHAUS: There are two substantive
5 determinations which are made relative to the content.
6 One is made by the sited states relative to their
7 ability to have continued access to the facilities.
8 The second would be made by the Department of Energy
9 relative to the rebate of the surcharges that we just
10 maintain.

11 COMMISSIONER REMICK: So, we just pass those
12 on, the certifications, then?

13 MR. LOHAUS: Yes.

14 (Slide) Okay. May I have the next chart,
15 please?

16 In looking at the steps followed by staff in
17 the issuance of guidance, I'd like to first highlight
18 that development of a guidance was not required by the
19 Act. Rather, staff prepared the guidance at state
20 request to help facilitate the compliance process and
21 to help identify the type of information which should
22 be included in a certification. We developed early
23 drafts of the guidance, shared them with the states
24 and, following Commission approval, the guidance was
25 transmitted to the governors and compacts in early

1 '89. The major elements of this guidance are shown on
2 the next briefing chart.

3 (Slide) With respect to statutory
4 considerations, even though NRC has a limited role
5 under the Act, the guidance was developed to help
6 ensure that a sufficient amount of information would
7 be included in a state's certification to provide a
8 basis for the determinations to be made by the sited
9 states and DOE. It further identifies that the
10 certifications are to cover all low level waste,
11 including mixed waste.

12 Four broad technical areas are also
13 identified which include information on the number and
14 type of generators, the type and volume of waste to be
15 generated, and a description of the actions that will
16 be taken to manage waste after the end of '92. The
17 guidance also sets out administrative procedures to
18 help states in filing the certifications and to let
19 them know what to expect relative to NRC's handling
20 and processing after receipt.

21 (Slide) The next chart, please?

22 Before reviewing the steps that we followed
23 in processing the certifications, I'd like to identify
24 a unique term, "facial compliance," that is set out in
25 our guidance. It's a legal term that was applied to

1 encompass NRC's limited role under the Act. What it
2 means is that any certification which on its face
3 complies with the Act would be accepted as a
4 certification and will be transmitted to Congress.
5 Staff would not look behind the certifications to the
6 detailed description of actions. Rather, we would
7 check to make sure each submittal was signed by the
8 governor, dated, was identified as a certification,
9 and contained a description of the actions that was
10 required by the Act.

11 All certifications received were deemed to
12 meet facial compliance and were promptly forwarded to
13 the Department of Energy. Under the Act, DOE has 30
14 days to make their surcharge rebate determination. We
15 wanted to promptly provide copies to DOE to make sure
16 we did not affect the timing for their compliance
17 determination.

18 For reference in the briefing package, we've
19 included a copy of the letter we use to transmit the
20 certifications to DOE and a copy of a recent letter
21 provided to DOE which sets out the final procedures
22 that we would use in transmitting the certifications
23 to DOE and to meet their guidance.

24 Concurrently with transmittal to DOE, the
25 Office of Government and Public Affairs promptly

1 acknowledged receipt of the certifications through a
2 written response back to the governors.

3 (Slide) May I have the next chart, please?

4 COMMISSIONER REMICK: Did you say that all
5 of the certifications met the facial compliance check?

6 MR. LOHAUS: Yes.

7 The next chart shows the final and remaining
8 processing steps. This would involve sending the
9 certifications to Congress and public notification
10 through publication in the *Federal Register*.
11 Transmittal to Congress will be accomplished through
12 individual letters to the President of the Senate and
13 Speaker of the House to be signed by the Chairman.
14 These letters are in final concurrence and will be
15 ready for signature shortly. We've included draft
16 copies of those letters as a part of the briefing
17 package.

18 In addition to publication in the *Federal*
19 *Register*, we will also send copies to the sited states
20 and to interested congressional delegations and
21 oversight committees.

22 (Slide) The next chart shows a summary of
23 the certifications that were received. We've divided
24 the list into three categories. First, we've
25 identified those states which are affiliated with one

1 of the sited compacts which are not subject to the
2 milestone and which did not file a certification. The
3 second column identifies all states subject to the Act
4 and which submitted a timely certification to NRC.
5 I'd also like to highlight that one compact, the
6 southwest compact, met the 1990 milestone through
7 submittal of both a license application and a
8 governor's certification. The license application for
9 the California facility does not presently cover mixed
10 waste. So, the four states within the southwest
11 compact also submitted a governor's certification to
12 cover mixed waste.

13 Finally, we did not receive certifications
14 from the State of Vermont and Puerto Rico. In these
15 cases, letters have been sent to each governor noting
16 that a certification was not received by NRC and asked
17 the governor to confirm whether a certification will
18 or will not be submitted.

19 (Slide) Could I have the final chart,
20 please?

21 With processing just about completed and
22 looking to the future, there are several issues which
23 will be associated with the states' implementation
24 actions. First is the issue of storage of low level
25 waste. Generators in a number of states will need to

1 store waste for an interim period until the end of--
2 excuse me, will be required to store waste for an
3 interim period after the end of 1992, until new
4 disposal capacity is available.

5 In anticipation of this issue, the
6 Commission directed the staff in early '89 to conduct
7 an evaluation of the need for additional regulations
8 and guidance in the area of low level waste storage.
9 That evaluation concluded that existing guidance
10 covering storage of low level waste at reactors, this
11 is the five years storage guidance that we have
12 presently, was adequate.

13 A need, however, was identified for
14 additional guidance dealing with storage of waste at
15 materials licensees. Such guidance has been
16 prepared -- I have a copy with me today -- by NMSS
17 staff in coordination with the regions and will be
18 issued in about a month as an information notice to
19 all generators. At that time, we'll also make copies
20 available to the states and compacts.

21 The guidance addresses safety considerations
22 important to the handling and storage of low level
23 waste. It anticipates that many licensees will not
24 have to amend their license in order to store waste
25 safely. If an amendment is required, the guidance

1 identifies the type of information that would be
2 required in an amendment request that will help
3 facilitate their preparation of the request and
4 ensuring they address adequate areas and will also
5 help facilitate NRC's review.

6 With respect to resource impacts, we've
7 conservatively estimated that in looking at the
8 potential increase that we might see in licensing
9 casework, resource impacts could be as high as three
10 FTE total for the regions and up to one FTE total for
11 headquarters.

12 The final issue identified relates to
13 requests for NRC assistance and review of
14 implementation programs proposed by states in
15 governors' certifications. These requests may involve
16 looking at state implementation plans for interim
17 storage, responding to questions from states on
18 interpretation of regulations in guidance, and
19 interactions with states on specific licensing cases
20 dealing with need for extended storage. We plan to
21 handle these as a part of our routine level of effort
22 program of technical assistance to the states and no
23 new or additional resources are presently projected in
24 this area.

25 COMMISSIONER CURTISS: Paul, of the

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1 resources for licensing cases, how many licensing
2 applications does that assume? How many facilities
3 are we talking about?

4 MR. LOHAUS: We very conservatively
5 estimated that that would be 500 actions in 1991 and
6 500 actions in 1992.

7 COMMISSIONER CURTISS: How many sites are we
8 talking about there?

9 MR. BERNERO: Excuse me.

10 (Slide) Can we have the first backup slide,
11 please, Karen. I think it would be useful just to
12 use that slide.

13 COMMISSIONER CURTISS: Sure.

14 MR. BERNERO: This is a conservative
15 assumption. These submittals vary and it's hard to
16 read how much we're actually going to get, but the
17 conservative assumption -- and you're talking about
18 over 1,000 licensees involved and about 1,000
19 licensing actions. We think that's a pessimistic
20 estimate. We dealt with it as starting in FY '91.
21 Recall that the need would be for post-'92, at the end
22 of '92.

23 (Slide) To get a context on that, could I
24 have slide number 2, the backup, estimated resource
25 impacts?

1 This is the actual estimation as much as or
2 up to three FTE in the region and one at headquarters.
3 Now, we are carrying that margin technical assistance
4 to the states, 1.4 FTE, as a steady state thing.
5 That's already in the budget. This estimate of
6 additional licensing action we hope is very
7 conservative because the guidance will probably
8 eliminate most of the licensing actions, unless you
9 really need a possession limit change. Then the
10 guidance will facilitate and expedite any necessary
11 amendments so that many of them might even fall into
12 other amendments as just a small add-on.

13 COMMISSIONER CURTISS: Are these resource
14 estimates strictly associated with storage actions?

15 MR. BERNERO: Yes. These resource estimates
16 are as if it were a storage action alone. Of course
17 there's a regular casework that goes on.

18 (Slide) If you'd put up that next slide on
19 NMSS resources, for context we're talking about a
20 material licensing caseload in the regions that is in
21 tens of FTE. What we foresee is any impact in FY'91,
22 other than technical assistance to states we would
23 have to absorb in '91, we would request resources as
24 needed in '92. But I'm rather hopeful. I think the
25 guidance is going to minimize this licensing impact.

1 COMMISSIONER CURTISS: Okay.

2 CHAIRMAN CARR: Okay.

3 MR. LOHAUS: In conclusion, through the
4 actions we have discussed today, the NRC will have
5 completed its statutory obligations, to receive the
6 governors' certifications, forward them to Congress
7 and publish them in the *Federal Register*, and to
8 assist DOE and the sited states in receiving the
9 certifications for their compliance determinations.

10 This completes our formal presentation.
11 We'd be pleased to answer questions.

12 CHAIRMAN CARR: Any questions?

13 COMMISSIONER REMICK: I have a couple.

14 Does the staff plan to use their inspection
15 program, either resident inspectors at power plants or
16 inspectors of material licensees, to identify any
17 early indications of problems due to long-term or
18 extended storage of low level wastes and any health
19 and safety problems so one would have an early alert
20 that problems are developing? Has any thought been
21 given to that?

22 MR. LOHAUS: Yes. As a matter of fact, part
23 of the guidance that we've developed includes a new
24 inspection procedure that is specific to storage of
25 waste. The concept would be to ensure that wastes are

1 being safely stored in accordance with license
2 conditions.

3 At the same time, as a part of the
4 certification process, the states have been working
5 with and contacting individual generators, notifying
6 them of the need to store and identifying if there are
7 going to be particular areas or particular problems
8 that individual generators may need to address
9 relative to storage. So, as a part of that process
10 too, that should hopefully early on identify any
11 potential problems and the states can also work to
12 help ensure that they're dealt with at an early time.

13 MR. BERNERO: Excuse me, Commissioner
14 Remick.

15 COMMISSIONER REMICK: Yes, Bob.

16 MR. BERNERO: We also have that now as an
17 element of inspection. I can recall a number of
18 instances immediately where in the past we have
19 pursued this issue with licensees, particularly
20 reactor licensees that had some sort of outage that
21 generated a lot of waste as to the housekeeping and
22 the management of the low level waste. So, it's not
23 really a new subject, but we do have this tailored
24 inspection approach to make sure we can pick it up on
25 other licensees more effectively.

1 COMMISSIONER REMICK: Do we have reasonable
2 assurance in the case of agreement states that they
3 will also continue to monitor licensees to make
4 sure -- and what I'm thinking of, as you accumulate
5 large amounts of this, you're increasing the source
6 term that might now affect neighbors which did not in
7 previous years because of the volume.

8 MR. COMBS: This guidance will also be
9 provided to the agreement states and, in fact, we are
10 currently developing a program for inspection of
11 agreement state or, let's say, evaluation of agreement
12 states programs for waste.

13 COMMISSIONER REMICK: And in the case that a
14 problem is identified, a public health and safety
15 problem. Has the staff given any specific thought to
16 what action might be taken in those cases or do you
17 feel that existing actions that we take on other
18 safety issues are adequate?

19 MR. BERNERO: Well, of course, any health
20 and safety action that's warranted, we can take. But
21 the Act even envisions -- you know, there is an
22 emergency access rule that is available. But the
23 burden of proof is very high for that. In other
24 words, a generator who has problems and is making a
25 good faith effort to deal with the problems and

1 literally needs to have a place to send the low level
2 waste may be entitled to emergency access by an NRC
3 ruling, but that is a very difficult burden of proof
4 and it has to be to justify -- health and safety
5 justification such as, say, a hospital medical
6 practice might have.

7 COMMISSIONER REMICK: Yes.

8 MR. BERNERO: But I think we have ample
9 regulatory --

10 COMMISSIONER REMICK: That's one of the
11 examples I was thinking of. I'm thinking of large
12 urban hospitals where now maybe they don't have to
13 store a large amount of waste. Now, over a period of
14 years, they're going to have a large volume and maybe
15 that starts to effect adjoining buildings and things
16 that people had not anticipated prior --

17 MR. BERNERO: Well, a good example of that
18 is there's at least one major state, New York, which
19 in their description of their program recognizes that
20 sort of a problem and sets aside or plans a central
21 storage facility as a preliminary to having a central
22 disposal facility just in order to avoid that kind of
23 problem.

24 COMMISSIONER REMICK: Thank you, Mr.
25 Chairman.

1 CHAIRMAN CARR: Commissioner Roberts?

2 COMMISSIONER ROBERTS: No.

3 CHAIRMAN CARR: Commissioner Rogers?

4 COMMISSIONER ROGERS: Just -- do you have
5 any feeling about the quality of the submittals that
6 have come in thus far and any sense of what's actually
7 happening in the states? I know this facial
8 compliance is how you're supposed to conduct your
9 activities, but do you have any sense from looking at
10 the quality of these submissions as to what's really
11 happening out there?

12 MR. LOHAUS: In looking at the
13 certifications and maybe as an example -- we brought
14 two. One certification is a two page statement that
15 does go through and address the guidance and states a
16 very clear intent through a disposal contract that
17 would cover disposal through the end of '92 and their
18 intent to maintain that disposal contract beyond '92
19 to cover wastes. And also, one that contains a very
20 detailed description relative to the sources of waste,
21 the contacts that were made with generators and a
22 specific program that will be carried out. So, they
23 did vary in terms of the size and the amount of
24 detail.

25 In terms of the implementing actions, I think

1 that that's going to be a continually developing
2 process up through the end of 1992. This is a start
3 and there's a good level of information that's there.
4 There are questions relative to implementation that
5 will be addressed up through the end of 1992.

6 COMMISSIONER ROGERS: To what extent have
7 you seen anything in these submissions that deals with
8 issues of mixed waste or BRC?

9 MR. LOHAUS: The issue of mixed waste was
10 covered in the certifications relative to their -- the
11 states making a statement in the certification that
12 we're certifying that any or all low level waste which
13 would include mixed waste is covered. The level of
14 detail on the descriptions, again, varies. Some
15 states, for example Illinois, Nebraska and Texas, very
16 clearly state an intent to develop a mixed waste
17 disposal capacity at their facility. Another state,
18 for example, California, sets out a waste plan to deal
19 and continue to look at the issue of mixed waste.

20 MR. BERNERO: Excuse me. The BRC, I don't
21 recall any discussion of BRC in any of them.

22 COMMISSIONER ROGERS: That hasn't surfaced
23 in any of those. Even though we've heard about it
24 informally, it's not come --

25 MR. BERNERO: Not explicit in the

1 certifications.

2 COMMISSIONER ROGERS: That's very
3 interesting.

4 The topic that you touched on earlier on
5 what happens with respect to on-site storage, the
6 certifications were supposed to provide for some
7 statement of actions to be taken by the state to
8 secure all applicable permits and approvals, including
9 any amendments that might be required in the
10 generator's NRC licenses. Have you seen any evidence
11 of that kind of initiative in these certifications?

12 MR. LOHAUS: Two points. First is we did
13 issue clarifying guidance in August of this year which
14 dealt with that issue and pointed out that the states
15 retained the responsibility, but the responsibility
16 for securing necessary permits really rested with the
17 generators.

18 Again, depending on the level of detail
19 within the certification, that was an area that was
20 addressed relative to the interactions that the states
21 have had with generators, notifying them that there
22 would be a need for storage after 1992, encouraging
23 them to examine their programs to see what changes
24 might be necessary and if a determination was made
25 that a license amendment would be required, that they

1 would proceed forward in taking the necessary steps to
2 secure that amendment.

3 MR. BERNERO: Excuse me. I'd like to recall
4 once again the example of New York where the state,
5 exercising its responsibility, identifies the need for
6 storage capacity and proposes it, intends it to
7 eliminate as many as possible of such permit
8 amendments or license amendments. New York, of
9 course, is an agreement state and would license that
10 facility.

11 COMMISSIONER ROGERS: Well, I was just
12 recalling some of the language in the SRM that went
13 with the SECY that we received some time ago, 88-342,
14 that directed the staff to try to include language to
15 that effect, that the states were to assist the
16 licensees wherever they could if license changes were
17 required. I'm not sure how they can assist, frankly.

18 MR. BERNERO: Organizing capacity, yes.

19 MR. LOHAUS: They had been responsive. We
20 did include that aspect in the guidance and we did
21 issue some clarifying guidance subsequent to that as
22 well. The states have been responsive to that in
23 terms of contacting generators, doing surveys and
24 trying to work with the generators up front to
25 identify potential problems and make sure that if a

1 change is necessary that planning is started early.

2 COMMISSIONER ROGERS: There have been issues
3 of liability and foreign control of the sites, in the
4 compact states the host versus the non-host states.
5 What's the state of resolution of those issues? Do
6 you know?

7 MR. BERNERO: That's an area that I don't
8 have a tremendous amount of familiarity with. I don't
9 know what the current status is. It's an issue that
10 the states are addressing and are covering as a part
11 of their moving forward. But I don't have a lot of
12 detail or background in that particular area.

13 COMMISSIONER ROGERS: Okay. Thank you.

14 CHAIRMAN CARR: Commissioner Curtiss?

15 COMMISSIONER CURTISS: Just a handful of
16 questions here.

17 I want to go back to the number of sites
18 that we've got. Based upon what you've seen today,
19 how many sites do we expect to be developed both in
20 the compact regions and the go-it-alone states?

21 MR. LOHAUS: If we look at the compacts,
22 there are nine compacts. The northeast compact plans
23 to have two sites. So that would give us a total of
24 ten sites for the compacts. We have four unaffiliated
25 states that presently plan to have sites. If we were

1 to add the State of Vermont to that list as well, it
2 could be in the neighborhood of 14 or 15 sites as an
3 upper bound maximum.

4 I think what we're beginning to see, for
5 example, though are that a number of states, for
6 example Maine, New Hampshire, Rhode Island, the
7 District of Columbia, and also Vermont, are
8 negotiating contracts with the Rocky Mountain compact
9 to provide for disposal of waste. So, we may see
10 further activities along these lines and some
11 consolidation.

12 COMMISSIONER CURTISS: In view of those
13 developments, do you have a realistic projection on
14 what you would expect in terms of the numbers of the
15 sites or is it too early to tell?

16 MR. LOHAUS: I think it's too early to
17 really provide a crisp answer. I think we're looking
18 at, right now, somewhere in the neighborhood of 13 to
19 15 sites,, but that should be reduced through
20 consolidation.

21 COMMISSIONER CURTISS: Okay. Of the 13 to
22 15 that we expect now, how many of those sites are
23 located in agreement states?

24 MR. LOHAUS: The majority of those sites
25 would be located in agreement states.

1 COMMISSIONER CURTISS: Are there any host
2 states that are not currently agreement states that
3 are interested in becoming agreement states?

4 MR. LOHAUS: Yes. Pennsylvania is one,
5 Michigan is a second, and Massachusetts is a third.
6 Although in the Massachusetts certification, they do
7 conclude that the timing of their negotiations may be
8 such that the application would be submitted to NRC.

9 COMMISSIONER CURTISS: When will those
10 applications be submitted, or do we have a feel yet
11 for that?

12 MR. LOHAUS: I should be able to answer the
13 question. I don't recall specifically, but I think
14 it's in the '91, '92 time frame.

15 COMMISSIONER CURTISS: I guess what I'm
16 driving at is will we face a situation where the
17 Commission's review of the agreement state application
18 becomes the pacing item for the licensing of the
19 facility or can we process those expeditiously enough
20 that for those states that are interested in having
21 that authority it can be turned over to them, assuming
22 a timely and complete application in time then to
23 proceed with the licensing of the facility?

24 MR. COMBS: The review process varies from
25 state to state. We are in negotiations now with the

1 State of Pennsylvania for their limited agreement to
2 cover waste only. We have talked with Michigan on and
3 off over the past four or five years with respect to
4 their limited agreement. And when Michigan announced
5 three counties for characterization, they indicated at
6 that time that they would be interested in becoming an
7 agreement state. Now, the other states were not as
8 advanced except for perhaps the State of Maine.

9 COMMISSIONER CURTISS: On the storage
10 question, I really have two questions. One, do we
11 envision any circumstance today where we would
12 contemplate or allow storage at NRC licensees beyond
13 the 1/1/96 deadline or are we looking to that deadline
14 as a drop-dead date for storage capacities since the
15 states either have to take title to the waste or have
16 disposal facilities operating?

17 MR. LOHAUS: I think we're looking at that
18 as an end point. However, there will be need for
19 storage beyond 1996. One certification in particular,
20 the certification filed by the State of Maine, and
21 with, I think, their existing legislation, does
22 provide sort of a contingency aspect that they could
23 direct that there be additional storage beyond 1996 if
24 their facility is not in operation at that point in
25 time. So I think we're looking at that as an end

1 point, but there may be need for some storage beyond
2 that.

3 But I think the Act very clearly says that
4 at that point in time the state's responsible and the
5 generators can notify the state and at that point the
6 state is then responsible for taking possession and
7 title. There may be some interim time in there during
8 which continued storage will be necessary before the
9 capacity or additional actions the state would take go
10 into effect.

11 COMMISSIONER CURTISS: Second question on
12 storage. I noticed in the New York certification, and
13 perhaps some others, that storage is being considered
14 in the context of greater reliance on brokers. Does
15 that pose any additional regulatory challenges for us
16 or considerations that rather than storage at the site
17 of generation, this waste will be transferred to
18 brokers and stored there?

19 MR. LOHAUS: I don't believe so. I think
20 that brokers, as a normal part of their business,
21 carry out programs of storage of waste generally
22 within six months to a 12 month period. Extending
23 storage beyond that should not be a significant
24 additional factor in their programs. It may very well
25 require an amendment to their license.

1 MR. BERNERO: Yes. Recall that with
2 brokers, we or agreement states ordinarily impose a
3 storage limit, not for health and safety reasons as
4 such, but to ensure that the broker doesn't become a
5 de facto waste repository. So, if, as part of the
6 strategy of the state that there is an interim major
7 storage responsibility at a broker, it's a factor in
8 waste disposal and there would be nothing unique that
9 I would see in the health and safety side of it that
10 would make it difficult to license that.

11 COMMISSIONER CURTISS: Okay. Mixed waste.
12 You touched on that a couple of times and I gather
13 there are some compact certifications and some state
14 certifications that have touched on the mixed waste
15 issue as well. Could you summarize in a little bit
16 more detail what the current thinking is in terms of
17 how we're going to resolve the mixed waste problem,
18 where we're going from here, particularly in view of
19 the California certification that seems to have
20 wrestled everything down except for the mixed waste
21 problem between now and 1993?

22 MR. BERNERO: Yes. Let me talk to that one.

23 When you read these certifications, you come
24 across, the impression forms that mixed waste is a
25 subject that most people would rather not address and

1 some are silent on the subject and just make an all
2 embracing certification. The others talk about it as,
3 "We're going to come to grips with it somehow." As
4 you know, we are still trying to get a joint
5 regulation guidance out. Some of the states think, or
6 at least their certification seems to suppose that
7 that's a doable thing, that there can be a mixed waste
8 module of some sort at the Illinois low level waste
9 disposal facility.

10 Right now, and this is really the subject of
11 another avenue of discussion we have with the
12 Commission in the overall arena of dealing with EPA,
13 right now we're still trying to cope with the dual
14 regulation of mixed waste, the dual act
15 responsibility. It's a very difficult thing. I wish
16 I could give you a simple, succinct answer that, "Here
17 it is, here's the answer," and it will all be over in
18 12 months. It won't be. There is no such simple
19 answer. There's not a simple answer if we go for
20 single regulation and there's not a simple answer if
21 we continue to try for dual regulation.

22 COMMISSIONER CURTISS: It's a curious kind
23 of issue because we've heard from some of the states
24 like Illinois and perhaps Texas and others that they
25 can actually -- they don't envision the mixed waste

1 problem being an intractable one. We've heard from
2 others, California and the generators in particular
3 out there, that seem to reach conclusion that is 180
4 degrees opposite of that, maybe because they have a
5 dry site out there.

6 But I guess if I understand what we're
7 doing, at least at this point, the objective is to try
8 to reach a joint approach with the EPA that would,
9 under the guidance that's been established, lead to
10 the design of a facility that could meet both the RCRA
11 requirements as well as the Part 61 requirements.

12 MR. BERNERO: Part 61 requirements, yes, and
13 the apparent contradiction of those requirements being
14 reconciled.

15 COMMISSIONER CURTISS: Do we know today,
16 have we identified today, any inconsistencies in those
17 two sets of requirements?

18 MR. BERNERO: Oh, yes, I think that's--
19 yes, there are a number of such. The classic one of
20 drainage --

21 CHAIRMAN CARR: Lined and unlined.

22 MR. BERNERO: Yes, lined and unlined, the
23 drained or undrained, yes.

24 COMMISSIONER CURTISS: Well, I mean
25 irreconcilable.

1 MR. BERNERO: Well, not irreconcilable.

2 COMMISSIONER CURTISS: The line of question,
3 I take it, we're addressed in the joint guidance.

4 MR. BERNERO: Yes, in the design
5 requirements.

6 COMMISSIONER CURTISS: Are there any
7 requirements yet that we know of that beyond what
8 we've said in the joint guidance appear to be
9 irreconcilable?

10 MR. BERNERO: The only one I could foresee
11 is this issue of land band storage. You know, the
12 RCRA requirements that EPA has have some very
13 intricate requirements related to temporary storage
14 and then permanent disposal. We have negotiated with
15 EPA and they are preparing draft guidance on that, but
16 as of just a few days ago, I checked with staff, we
17 hadn't gotten it yet.

18 MR. BANGART: You're aware that in recent
19 rulemaking by EPA they did grant a two year extension
20 of variance, national capacity variance? So that has
21 allowed some breathing room and I've seen at least one
22 letter from the State of California where they plan to
23 use that to further interact with EPA to gain
24 additional time, develop plans for ultimate disposal.

25 COMMISSIONER CURTISS: If we reach the point

1 where, let's say on the land band question, we
2 conclude that the approach that RCRA contemplates and
3 the approach that Part 61 contemplates are
4 inconsistent, what do we do at that stage?

5 MR. BERNERO: I think there would have to be
6 some sort of legal relief from one of them, one of the
7 requirements. And what I envision is that the
8 requirements in Part 61 are health, safety or
9 environmental requirements directly, direct
10 environmental impacts. The land band requirements are
11 programmatic environmental requirements that they're
12 trying to influence a technology or an industry that's
13 generating a waste and ensure that it stops generating
14 excessive or further quantities of such waste. I
15 think some legal relief, probably of the latter, would
16 be involved.

17 COMMISSIONER CURTISS: Okay. Just a couple other
18 quick questions.

19 There've been a number of folks who have
20 expressed a concern that the interpretation of the
21 Part 61 requirements in the guidance, in the reg
22 guides and so forth that are being developed or
23 circulated, may actually lead to a set of requirements
24 that go beyond what Part 61 on its face requires.

25 In addition, I gather there is some question

1 as to whether the Part 100 siting requirements that we
2 use for reactors would be employed in the low level
3 waste context for these facilities. Can you address
4 that question of whether, as we head now to the next
5 milestone, where we are on those two questions?

6 MR. LOHAUS: The guidance that we set out,
7 at the time we prepared it, incorporated the best
8 available information that we had that we could apply
9 to further implement and provide guidance relative to
10 meeting the requirements in Part 61. In some cases,
11 we do refer to requirements in Part 100 or Part 150.
12 It's set out as guidance. It's one approach that can
13 be followed in meeting the regulations in Part 61.
14 Licensees, applicants can propose alternative
15 approaches. But what we tried to do is to provide an
16 approach and to set a guidance that could be followed
17 using the best available guidance at that time.

18 MR. BERNERO: Yes, but to pick up on that,
19 you know this map that you have in your handout has a
20 whole rich body of information in it. One of the
21 things you can see is the acronym SLB band, shallow
22 land burial band. And you'll see that's very
23 prevalent, a lot of places. And what that does is
24 change the context, and that's why I believe you
25 raised the question, Commissioner Curtiss, about Part

1 100.

2 You're shifting to a structural requirement
3 and you're shifting away from siting requirements and
4 performance requirements that were developed and
5 promulgated on the basis of shallow land burial and
6 drainage thereof. This is an evolution that we're
7 trying to track carefully, because the growth in
8 interest in civil structures raises the possibility of
9 a wholly new context in which you say, "What is the
10 full spectrum of requirements for civil structures, if
11 they are to fully replace what I would call 'shallow
12 land burial conformation?'" And this could get us
13 beyond reg guide into alternate regulation.

14 There are two ways to satisfy the
15 regulation, shallow land burial a la Part 61 or a
16 fully different but same performance set of
17 regulations including structural design and rather
18 exhaustive treatment to get the equivalent.

19 COMMISSIONER CURTISS: But from the
20 standpoint of the siting requirements, even with an
21 engineered facility for low level waste disposal, it
22 is still -- that facility is still much more like a
23 shallow land burial facility than it would be a
24 reactor.

25 MR. BERNERO: Oh, yes. The siting

1 requirements are still geared to Part 61, which is
2 different from a reactor.

3 MR. LOHAUS: The siting requirements would
4 apply in all cases, whether there are engineering
5 barriers that are applied and used as a part of the
6 disposal facility or whether it's relying more on the
7 traditional shallow land burial technique. The siting
8 requirements are applied in all cases.

9 MR. BANGART: I'd like to further add, our
10 view at this time is that the concern you expressed is
11 relatively isolated in nature and recognize that much
12 of the guidance that we did promulgate is there at the
13 request of the states and compacts and we don't have a
14 large number of such entities expressing concern. On
15 the seismic issue, we do recognize the difference and
16 the difference in the criteria that would be necessary
17 for shallow land disposal versus an engineered
18 structure.

19 COMMISSIONER CURTISS: Let me pick up on
20 that point because you've alluded to the fact that the
21 states can come in, states or compacts can come in and
22 have facilities that are more stringent than what Part
23 61 requires, going beyond shallow land burial and
24 actually engineering facilities that exceed the
25 requirements of Part 61.

1 I guess the question I have is on what's
2 been called the Illinois one millirem issue, the
3 question of whether a state can establish a more
4 stringent radiation protection requirement as a part
5 of the range of requirements or the whole
6 comprehensive approach that it takes at the state
7 level.

8 Could you tell us generally where we are on
9 that question and specifically whether we've resolved
10 the Illinois one millirem issue?

11 MR. COMBS: At this particular point, we
12 have not resolved the issue. We did send to Illinois
13 about a year ago a letter asking for clarification.
14 We recently received a letter from Illinois concerning
15 below regulatory concern materials which in part
16 addressed the one millirem issue, indicating that it
17 was a bit more than a design standard but actually an
18 operating standard, but we haven't come to any other
19 conclusions.

20 COMMISSIONER CURTISS: And your current
21 thinking is that if a state comes in and establishes a
22 design standard that is lower than 25 millirem in Part
23 61 that that would be a matter of compatibility under
24 the agreement state approach?

25 MR. COMBS: That's correct.

1 COMMISSIONER CURTISS: That they would be
2 precluded from doing that?

3 MR. COMBS: Under existing guidance, yes.

4 COMMISSIONER CURTISS: Okay. One final
5 question. You alluded to the title, "Transfer
6 Provisions," in the statute and as early as 1993 and
7 as late as 1996 the possibility that the waste may
8 start finding its way from the generators to the
9 states. It's still a ways off, but I guess I'd wonder
10 what the staff's current thinking is in terms of where
11 we're going to go as an agency in developing the
12 procedures that might be necessary for the
13 implementation of that requirement?

14 MR. LOHAUS: It's a very complex issue and
15 we do plan to conduct a study. We have a contract
16 that will be coming -- a large contract that will be
17 coming forward for approval and as part of a task in
18 that contract we would like to explore that further
19 and get a better idea of what the congressional intent
20 and legislative history of that provision is and with
21 that examine what areas NRC ought to be prepared to
22 deal with, and if there are specific things that we
23 should start to use that as a process to frame that
24 and start the process.

25 COMMISSIONER CURTISS: What's the timing for

1 the contract? How long would it be?

2 MR. LOHAUS: It will probably be in effect
3 late this year or early next year in terms of the
4 large contract and then that would be one task that
5 will be set out within that contract.

6 CHAIRMAN CARR: Counselor?

7 MR. PARLER: Mr. Chairman, if there's a
8 question about legislative intent of what a statute
9 requires, I would respectfully hope that they would
10 ask us first and not contract out for it. Perhaps he
11 didn't intend that, but that's what I understood.

12 COMMISSIONER CURTISS: Yes. It does seem to
13 me that although that's some ways down the pike, it's
14 pretty clear, I think, in the view of many, what the
15 legislation intends. There may be some problems that
16 we as the agency that's responsible for licensing
17 those who possess the waste may have to come to grips
18 with. But if it does require some sort of rulemaking
19 or additional Commission consideration, and if that in
20 turn translates into the one or two years that that
21 typically takes, if you back off from January 1st of
22 '96, that gets you to January 1st of '94. And I guess
23 I would encourage you as we now head towards the next
24 milestone and with the 1/1/93 potential that title
25 could transfer at that point, although unlikely, that

1 we being to focus on the title transfer question
2 because it does seem to me that it's an integral part
3 of the statute and the effectiveness of getting the
4 states to move along with development of disposal
5 capacity.

6 That's all I have.

7 CHAIRMAN CARR: Where are the surcharge
8 funds held and who holds them?

9 MR. LOHAUS: The surcharge funds are
10 retained and held by the sited states. They do return
11 25 percent of those funds to the Department of Energy
12 and they are retained in a separate account by DOE.
13 Then, within 30 days of meeting each milestone, DOE
14 takes action to return that 25 percent rebate back to
15 the states or compacts.

16 CHAIRMAN CARR: So the actual operator of
17 the facility charges the funds, then ships them to the
18 state, then the state sends them to DOE?

19 MR. LOHAUS: Yes.

20 CHAIRMAN CARR: DOE then holds them and
21 sends them back to the compact or the state, huh?

22 MR. LOHAUS: Yes.

23 CHAIRMAN CARR: How big is the pot now, do
24 we know?

25 MR. LOHAUS: I don't have specific figures.

1 I believe, if I recall, I think Illinois had estimated
2 that their surcharge for this milestone would run over
3 \$1 million. Their surcharge rebate for this milestone
4 would run over \$1 million.

5 CHAIRMAN CARR: Okay. I don't know if
6 you've had them long enough to analyze the data that
7 came in with them, but have you had -- what is the
8 comparison between the estimates of the volume and
9 types as compared to what we thought they would from
10 the Brookhaven look? Are they pretty much and
11 generally in agreement with what we thought it would
12 be or --

13 MR. LOHAUS: I don't see any major
14 differences or disparity in terms of what we would
15 anticipate seeing based on current information and
16 what's set out in the certifications.

17 CHAIRMAN CARR: Well, no surprises.

18 MR. LOHAUS: No.

19 MR. BERNERO: Excuse me, Mr. Chairman. Keep
20 in mind though, some of these submittals are like what
21 Paul showed you, only a two page letter. So, there's
22 not a whole lot of data there to look at.

23 CHAIRMAN CARR: I notice the certifications
24 all are contingent on a number of assumptions,
25 including stability of the federal regulatory

1 framework and timely action on license amendments to
2 allow for extended storage. Are those valid
3 assumptions?

4 MR. LOHAUS: Yes.

5 MR. BERNERO: Yes, I think so, in light of
6 recent activities with the low level waste standards
7 and the words I gave you on the licensing activities,
8 which I think will be reasonable.

9 CHAIRMAN CARR: So you're not going to end
10 up on the controlling path.

11 MR. LOHAUS: We going to try not to do that.

12 CHAIRMAN CARR: How about running over one
13 more time for me what anticipations you got for a need
14 to promulgate new regulations or regulatory guidance
15 pertaining to interim storage?

16 MR. BERNERO: Well, we did take care of the
17 reactor storage six months, eight months ago,
18 something like that, reviewed it. This guidance which
19 is about to go out and has been integrated with the
20 regions and so forth, this is going to be an
21 information notice that spells out to each licensee
22 all of the safety issues and considerations. I don't
23 think we'll need rulemaking on this. I think existing
24 rules are adequate.

25 What we're doing is literally walking the

1 licensees through the issue of waste storage and make
2 sure that they have a very clear understanding of what
3 the issues or safety considerations are and how their
4 license controls them. By that mechanism, I think
5 we'll minimize the need for license amendments.

6 But those facilities that would need another
7 change in their facility, that is say a larger
8 building or another building or a facility that would
9 have to change its possession limit, they are
10 generally controlled to how many curies of activity
11 they have, that would make that a very straightforward
12 proposition to get such an amendment. But I don't
13 think we'll need rulemaking. I think existing rules
14 are sufficient.

15 CHAIRMAN CARR: Do you foresee an increase
16 in the number of requests to put reactor low level
17 waste disposal on site with reactor sites?

18 MR. BERNERO: Well, the reactors already
19 have five years authorized and I can speak from my
20 personal observation, many of the plants could easily
21 accommodate much more than that. Their volume is the
22 largest of all the generators and it's difficult to
23 say if they're going to go substantially beyond that,
24 depending on how this works out because they've got a
25 five year cushion already and most of them don't carry

1 that inventory. They have the authorization, but they
2 move the stuff out.

3 CHAIRMAN CARR: They may be reluctant to
4 move stuff out if the surcharge goes on them.

5 MR. BERNERO: Yes. If they're involved in
6 one of the states that is in trouble, yes, and there
7 are a few that you can see already in that category.

8 CHAIRMAN CARR: Okay. Are there any other
9 questions?

10 Well, the Commission appreciates the staff's
11 hard work in preparing the briefing in such a short
12 time after the certification. It appears that the
13 states, with a few exceptions, are making reasonable
14 progress in providing for the storage, disposal and
15 management of low level waste. I am particularly
16 pleased with the progress that states like California
17 have made in actually developing a license application
18 for new low level waste disposal facilities.

19 I commend the staff also for its rapid
20 processing of the governors' certifications. Your
21 foresight in preparing constructive guidance has
22 helped to ensure that the certifications generally
23 provide the types of information that the sited states
24 and the Department of Energy will need to evaluate
25 compliance with the milestones of the Low Level

1 Radioactive Waste Policy Amendments Act.

2 In addition, your readiness for processing
3 the certifications has enabled the NRC to complete its
4 duties under the Act in a timely manner. I would
5 encourage you to continue monitoring state progress in
6 developing the new waste disposal facilities and to
7 proactively resolve emerging issues to ensure
8 protection of the public health and safety. This
9 includes fulfilling our own obligations for
10 maintaining the stable regulatory framework and for
11 timely completion of the licensing actions to support
12 the state programs.

13 In addition, I urge you to carefully
14 evaluate implications of the information contained in
15 the certifications on NRC's regulatory program for low
16 level waste management.

17 Finally, I encourage you to continue to
18 enhance our support for the agreement state programs
19 since they will bear most of the burden in regulating
20 the development of the new disposal sites and the
21 storage of waste in the interim.

22 If there are no other comments, we stand
23 adjourned.

24 (Whereupon, at 11:04 a.m., the above-
25 entitled matter was concluded.)

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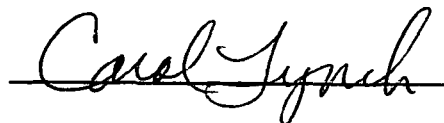
This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON GOVERNORS' CERTIFICATION OF
LOW LEVEL WASTE SITES

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JANUARY 17, 1990

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
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1/16/90

GOVERNORS' CERTIFICATION
OF LOW LEVEL WASTE SITES

JANUARY 17, 1990

PAUL H. LOHAUS

CONTACT: LARRY W. CAMPER
PHONE: 49-20573

BRIEFING OVERVIEW

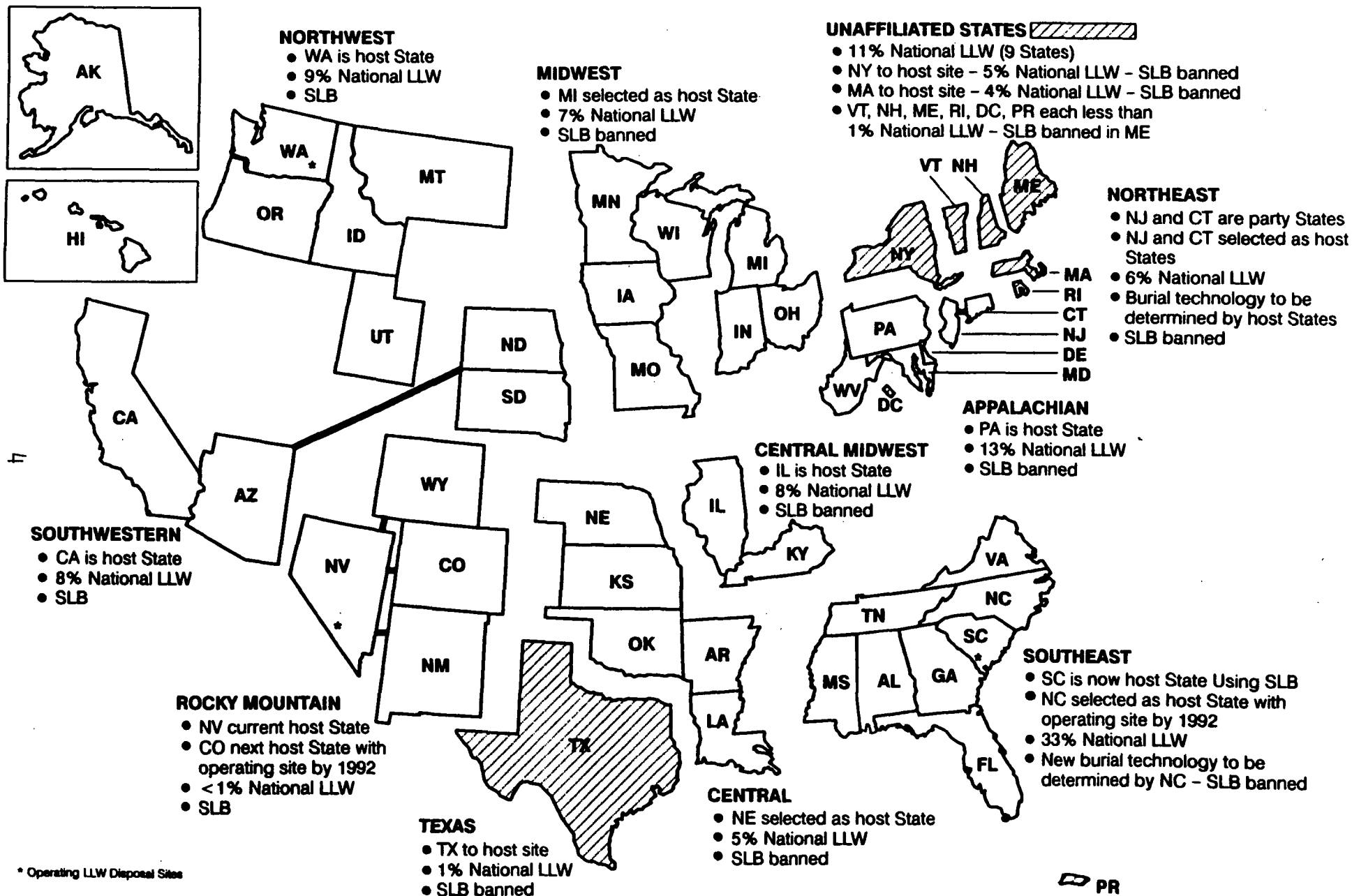
1. BACKGROUND
 - SECY-88-342 (DECEMBER 13, 1988)
 - KEY LLRWPA A CONCEPTS
 - 1990 LLRWPA A MILESTONE
 - NRC GUIDANCE
2. RESPONSE OF THE STATES
TO 1990 MILESTONE
3. NRC PROCESSING OF STATE SUBMITTALS
4. POTENTIAL LOW-LEVEL WASTE PROGRAM
ISSUES AFFECTING NRC

KEY LLRWPAA CONCEPTS

- ° STATES RESPONSIBLE FOR LLW
- ° OPERATING SITES OPEN UNTIL END OF 1992.
- ° ESTABLISHES MILESTONES, INCENTIVES
AND PENALTIES

LOW-LEVEL RADIOACTIVE WASTE COMPACT STATUS

JANUARY 1990



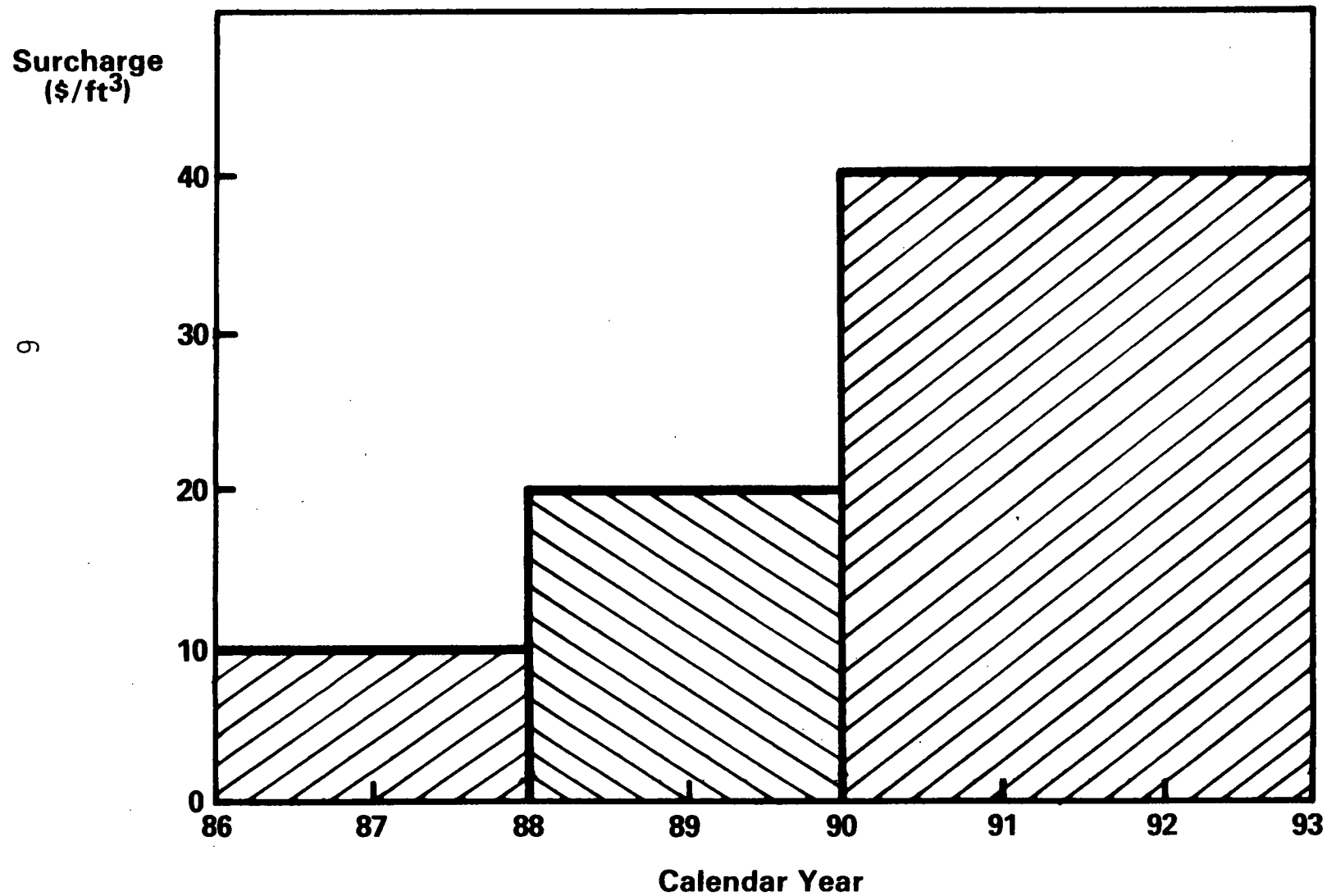
Note: National LLW volume for 1988 = 1.4 million cubic feet.
SLB = shallow land burial

Source: State, Local and Indian Tribe Programs
Office of Governmental and
Public Affairs, NRC

LLRWPA MILESTONES

- ° 7/1/86: IDENTIFY STATE APPROACH
- ° 1/1/88: SITING PLAN
- ° 1/1/90: APPLICATION OR CERTIFICATION
- ° 1/1/92: APPLICATION
- ° 1/1/93: DISPOSE OR TAKE TITLE TO LLW
- ° 1/1/96: TAKE LLW TITLE AND POSSESSION

SURCHARGES UNDER LLRWPA OF 1985



KEY ELEMENTS OF 1990 LLRWPA MILESTONE

BY JANUARY 1, 1990, A NON-SITED STATE
SHALL EITHER:

- FILE A COMPLETE APPLICATION; OR
- PROVIDE A WRITTEN CERTIFICATION

CONTENT OF CERTIFICATIONS

GOVERNOR "SHALL PROVIDE A WRITTEN CERTIFICATION" TO NRC THAT THE STATE "WILL BE CAPABLE OF PROVIDING FOR, AND WILL PROVIDE FOR, THE STORAGE, DISPOSAL, OR MANAGEMENT OF ANY LLW GENERATED IN THE STATE AND REQUIRING DISPOSAL AFTER DECEMBER 31, 1992", AND INCLUDE "A DESCRIPTION OF THE ACTIONS THAT WILL BE TAKEN TO ASSURE THAT SUCH CAPACITY EXISTS." [EMPHASIS ADDED]
(SECTION 5(E)(1)(C)(II))

NRC ROLE IN STATE CERTIFICATIONS

COMMISSION "SHALL TRANSMIT ANY CERTIFICATION
RECEIVED ... TO THE CONGRESS AND PUBLISH
ANY SUCH CERTIFICATION IN THE FEDERAL
REGISTER. [EMPHASIS ADDED]"
(SECTION 5(E)(1)(E))

ORIGINS OF NRC GUIDANCE

- ° PREPARED AT STATES' REQUEST
- ° COORDINATED WITH STATES AND DOE
- ° REVIEWED AND APPROVED BY COMMISSION (SECY 88-342)
- ° SENT TO STATES, PUBLISHED IN FR, FEBRUARY, 1989

KEY ELEMENTS IN NRC GUIDANCE

- ° STATUTORY CONSIDERATIONS
- ° TECHNICAL CONTENT OF CERTIFICATIONS
- ° PROCEDURES FOR SUBMITTAL
- ° NRC PROCEDURES FOR PROCESSING

NRC PROCESSING OF STATE SUBMITTALS

- ° "FACIAL COMPLIANCE" CHECK
 - SIGNED BY GOVERNOR?
 - DATED?
 - CONTAIN "DESCRIPTION OF ACTIONS"
UNDER SECTION 5(E)(1)(C)?
- ° PROMPTLY FORWARDED TO DOE
- ° RECEIPT OF CERTIFICATIONS ACKNOWLEDGED
BY GPA/SLITP

NRC PROCESSING OF STATE SUBMITTALS
(CONT'D)

- ° TRANSMIT TO CONGRESSIONAL LEADERS
AND SITED STATES
- ° PUBLISH IN FEDERAL REGISTER
- ° COPIES TO STATE CONGRESSIONAL
DELEGATIONS AND OVERSIGHT COMMITTEES

GOVERNOR'S CERTIFICATIONS

Not Required to Certify (19 States)

Alabama
Alaska
Colorado
Florida
Georgia
Hawaii
Idaho
Mississippi
Montana
Nevada
New Mexico
North Carolina
Oregon
South Carolina
Tennessee
Utah
Virginia
Washington
Wyoming

Certifications Received (31 States)

Arizona
Arkansas
California
Connecticut
Delaware
District of Columbia
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Maine
Michigan
Minnesota
Missouri
Nebraska
New Hampshire
New Jersey
New York
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Texas
West Virginia
Wisconsin

Certifications Not Received

Puerto Rico

Vermont

POTENTIAL LLW PROGRAM ISSUES AFFECTING NRC

- ° GUIDANCE FOR EXTENDED STORAGE
- ° ADDITIONAL LICENSING CASEWORK
- ° REQUESTS FOR NRC TECHNICAL ASSISTANCE

ATTACHMENTS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 21, 1989

Jill Lytle, Acting Associate Director
Office of Waste Operations
Office of Environmental Restoration
and Waste Management
Mail Stop EM-30
U.S. Department of Energy
Washington, D.C. 20545

I am writing regarding NRC's anticipated receipt of Governor's certifications for the 1990 milestone of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

In accordance with published DOE guidance, I will be transmitting and verifying receipt of the certifications to you as they are received. DOE's guidance indicates that DOE will accept as documentation of a State's compliance with the milestone a statement signed by an NRC official authorized to verify NRC's official receipt of such correspondence. The guidance further provides that the statement should verify that a certification, as described in the Act, signed by the Governor of the State, was filed with the NRC by January 1, 1990. The statement should indicate that the Governor's certification provides for the storage, disposal or management of any low-level radioactive waste for which the State is responsible under Section 3(a) of the Act.

I have attached, for your information, a copy of the transmittal letter we plan to send to you to verify receipt of the certifications. To the extent that the certifications are clear and contain a statement that the certification provides for the "...storage, disposal or management of any low-level radioactive waste for which the State is responsible under Section 3(a) of the Act..." or words to that effect, I will include such a statement in my letter to you. In the unlikely event that such a statement is not specifically contained in the certification, I will proceed to transmit the certification to you and verify its receipt in accordance with your guidance. For all certifications, the formal determination of compliance with the Act for purposes of state eligibility for receipt of surcharge rebates rests with DOE.

We have previously informally reviewed drafts of the enclosed letter with William Newberry of your staff. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Robert M. Bernero", is written over the typed name.

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Jill E. Lytle, Acting Associate Director
Office of Waste Operations
Office of Environmental Restoration
and Waste Management
Mail Stop 7A049
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20545

Dear Mrs. Lytle:

In accordance with the Department of Energy's January 23, 1989, "Notice of DOE Policies and Procedures Regarding the January 1, 1990 Milestone", the Nuclear Regulatory Commission (NRC) hereby verifies receipt of the enclosed certification submitted by the State (Commonwealth) of _____ to meet Section 5(e)(1)(C)(ii) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act). This certification was signed by Governor _____, and certifies that the State (Commonwealth) of _____ will be capable of providing for and will provide for storage, disposal, or management of any low-level radioactive waste generated within the State and requiring disposal after December 31, 1992. This certification was officially provided to NRC on _____. No later than January 23, 1990, copies of all certifications will be sent to Congress and to the Office of the Federal Register for publication in accordance with Section 5(e)(1)(E) of the Act. At the same time, the sited states officials named in our guidance in the February 22, 1989, Federal Register Notice will be provided with copies of all certifications. NRC has processed the certification in accordance with the summary provided to you in my _____, 1989, letter.

Sincerely,

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure:
As stated

The Honorable Thomas S. Foley
Speaker of the House
United States House of Representatives
Washington, D.C. 20510

Dear Mr. Speaker:

In accordance with Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), that directs the U.S. Nuclear Regulatory Commission to transmit any State certification on low-level waste to Congress, we are forwarding the enclosed certifications. Concurrently with this transmittal, copies of these certifications are being forwarded to the Federal Register for publication, to the designated officials in each sited State, and to affected State Congressional delegations. After receipt and processing, we sent copies of the certifications to the Department of Energy (DOE) in view of DOE's statutory obligation to make rebates of surcharges within 30 days of January 1, 1990.

Section 5(e) of the LLRWPA sets forth the milestone requirements for States and interstate compacts to have continued interim access to existing disposal facilities in what the Act calls "sited" States. To meet the 1990 milestone, non-sited States by January 1, 1990, must have either (1) submitted a complete license application to NRC or to the appropriate Agreement State agency (2) submitted to NRC a written certification by the Governor that the State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the State and requiring disposal after December 31, 1992. This certification is to include a description of the actions that will be taken to assure that such capacity exists. Section 5(e)(1)(F) of the Act also allows States to meet the 1990 milestone through disposal agreements with sited compacts.

The 1990 milestone is designed to assure that certifying States continue to progress toward the fulfillment of the LLRWPA policy that each State, either by itself or in cooperation with other States, will be responsible for providing for the disposal of LLW generated within the State. Failure to meet this milestone may result in the loss of funding to the state or compact through a rebate of disposal surcharges paid by waste generators into an escrow fund maintained by the DOE. Failure to meet this milestone may also result in loss of access by waste generators to currently operating disposal sites. It is the responsibility of DOE and the sited States to determine whether each certification complies with LLRWPA requirements for the respective purposes of

releasing escrowed disposal surcharge rebate funds and allowing continued access to existing disposal facilities. Transmittal of the certifications to Congress and the Federal Register fulfills the Commission's obligations under the LLRWPA.

If you have any questions or require further clarification, do not hesitate to contact me.

Sincerely,

Kenneth M. Carr

Enclosures:
Certifications for 30 States
and the District of Columbia

The Honorable J. Danforth Quayle
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), that directs the U.S. Nuclear Regulatory Commission to transmit any State certification on low-level waste to Congress, we are forwarding the enclosed certifications. Concurrently with this transmittal, copies of these certifications are being forwarded to the Federal Register for publication, to the designated officials in each sited State, and to affected State Congressional delegations. After receipt and processing, we sent copies of the certifications to the Department of Energy (DOE) in view of DOE's statutory obligation to make rebates of surcharges within 30 days of January 1, 1990.

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Sincerely,

Kenneth M. Carr

Enclosures:
Certifications for 30 States
and the District of Columbia