

# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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NUCLEAR REGULATORY COMMISSION

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BRIEFING ON NRC ACTIONS FOR CLEANUP OF  
CONTAMINATED SITES UNDER NRC JURISDICTION

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Thursday, December 21, 1989

The Commission met in open session, pursuant to notice, at 2:00 p.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:

DOCTOR ANDREW BATES, Office of the Secretary

MARTIN MALSCH, Deputy General Counsel

JAMES TAYLOR, Executive Director for Operations

BOB BERNERO, NMSS

DICK CUNNINGHAM, NMSS

JOHN HICKEY, NMSS

VANDY MILLER, State Programs

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

2:04 p.m.

CHAIRMAN CARR: Good afternoon, ladies and gentlemen.

The Nuclear Regulatory Commission has an obligation to ensure that licensed facilities are properly decontaminated and decommissioned prior to their release for unrestricted use. The purpose of this afternoon's meeting is for the staff to brief the Commission about its strategy for cleanup of contaminated material sites. It will not address reactor sites.

In August of 1989, the Commission directed the staff to formulate a comprehensive strategy for NRC action to compel cleanup and to describe how the strategy will be implemented for material sites with known contamination. Staff recently transmitted its strategy to the Commission and will now discuss the strategy.

Copies of the staff's slides are available at the entrance to the meeting room.

Do any of my fellow Commissioners have any opening remarks?

If not, Mr. Taylor, you may proceed.

MR. TAYLOR: Good afternoon, sir. With me

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1 at the table, to my left, John Hickey and Bob Bernero  
2 from the Office of NMSS, Dick Cunningham, also from  
3 that office, and then Vandy Miller on the end from  
4 State Programs.

5 We have given you this paper talking about  
6 strategy and I would emphasize that we tried to also  
7 outline the problems and issues that we are going to  
8 have to address and which will take quite a bit of  
9 effort within the staff.

10 Bob Bernero will now start the --

11 MR. BERNERO: Thank you, Jim.

12 (Slide) May I have slide 2, please?

13 Just to outline what we would expect to  
14 cover today is first I'd like to set a context by  
15 identifying and noting some related matters,  
16 Commission actions and the like. Then speak to the  
17 strategy directly and describe in that or related to  
18 that strategy the difficulties we see. Then, lastly,  
19 discuss with you where we go from here because this  
20 is, after all, sort of a strategy and status and the  
21 agenda lies beyond us.

22 (Slide) May I have slide 3, please?

23 If you go to the related matters, there are  
24 a number of actions on the table with the Commission  
25 and really related to this matter. SECY-88-308, of

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1     October a year ago, identified 31 contaminated sites.  
2     It was sort of our little superfund list. It was  
3     current at the time and it identified older sites that  
4     needed some sort of remedial action before they could  
5     be closed out and released.

6             Now, truthfully, if you looked into those,  
7     there might be a couple of them that really needed  
8     only a survey and we have good reason to believe that  
9     after a survey they could be cleaned up. Others,  
10    remedial action, perhaps some difficulty because of  
11    large volumes of source-type material that would be  
12    difficult to dispose of.

13            So, we have that on the table identifying an  
14    agenda, now of some vintage. Then, there was a paper  
15    in July of '89 on recommended discussions with EPA  
16    regarding the superfund because in some of these cases  
17    there is a congruence of jurisdiction and interest,  
18    not necessarily identical, where there is RCRA  
19    material bringing the jurisdiction of the EPA in, as  
20    well as Atomic Energy Act material that may warrant  
21    remedial action. Now, that EPA dialogue on the  
22    superfund is on hold now pending this strategy  
23    discussion.

24            Lastly, in August of 1989, of this year,  
25    there was a hearing with Mr. Synar in the House and a

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1 number of commitments were made in that hearing or  
2 associated with that hearing, and they are commitments  
3 regarding survey of and actions on older sites of this  
4 type.

5 Now, everything we're saying in this  
6 strategy context and all of the discussion we had with  
7 Synar is applying to older sites, in essence, the  
8 formerly licensed or in some cases even never licensed  
9 sites. But nevertheless, a good deal of what we say  
10 can be applied and will be applied if emergency  
11 circumstances arise to what I would call a future site  
12 or a present site, a conventionally licensed site that  
13 for one reason or another turns out to be without a  
14 responsible party to clean it up.

15 COMMISSIONER REMICK: You say never  
16 licensed.

17 MR. BERNERO: Yes. We have an example, the  
18 West Lake Landfill, where the West Lake Landfill  
19 incorrectly received source material from a licensed  
20 site. So, it was never licensed. It becomes a matter  
21 of seeking who's the responsible party.

22 (Slide) If we go to slide 4, we've got an  
23 overview of the strategy itself. All I'm doing here  
24 is reprinting the four headings of the strategy as  
25 listed in the paper. This overall approach, to put it

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1 in another set of phrases, is really a very  
2 straightforward and simple thing. The first element,  
3 identify the problem, find the site and identify the  
4 site where remedial action might be warranted or  
5 whether you don't know whether you need remedial  
6 action. The second element is identify the criteria  
7 that are pertinent or appropriate for that problem or  
8 issue. Thirdly, set schedules for the remedial action  
9 and, fourth, and this, remember, in our regulatory  
10 role ensure that it happen, have the legal procedures,  
11 the administrative procedures to ensure that it  
12 happens and, as we'll talk later, ensure that it  
13 happens at an appropriate time, in a timely way.

14 (Slide) May I have slide 5?

15 That strategy, though straightforward,  
16 confronts us with some regulatory difficulties. Now,  
17 we discussed them at some length in the paper. I'd  
18 like to touch on them here and emphasize there are  
19 three regulatory difficulties as listed on the slide  
20 here, but the first two are the ones we identify as  
21 the major difficulties. They, by their presence,  
22 complicate and exacerbate the third difficulty. The  
23 third difficulty, of course, is the need for  
24 procedures for dealing with formerly licensed sites,  
25 should we go in and reinstitute the license or put

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1       them under order or whatever mechanism we should have.

2               But a difficulty that arises right off the  
3 bat is this first one. This Agency has suffered for  
4 years in this kind of work from the lack of residual  
5 activity criteria. We have not had robust, well  
6 established legal criteria to point to in our  
7 regulations to say, "That's how clean is clean  
8 enough."

9               Right now, I'm sure you're all attentive to  
10 it because of the attention you have shown to what we  
11 call the BRC or exemption policy. This Agency is  
12 trying to step out, to put down a logical basis, a  
13 basis of radiological health practice that can lead to  
14 a dose level and consequently to residual activity  
15 levels that can be associated with that phrase, "That  
16 is clean enough." That is our greatest single  
17 difficulty because when we see a site where remedial  
18 action is required, it is extremely difficult for us  
19 in many circumstances to say, "Remedial action is  
20 required to take it to that level of cleanliness,"  
21 when that level of cleanliness is something we're  
22 asserting. It's informal or, at best, a branch  
23 technical position. It has no more status than that.

24               CHAIRMAN CARR: Will the current policy  
25 operation solve that problem?

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1 MR. BERNERO: I think it will and that's why  
2 it's one of the highest priority things we have and  
3 why the staff is very anxious to press on with that.  
4 That will recur as you see in the later slides and in  
5 the discussion.

6 It will solve it at least for the interim.  
7 It will give us a logical basis, a technical basis, a  
8 promulgated standard or set of standards that we can  
9 then say, "We set it in print, we went through some  
10 regulatory administrative process, perhaps even  
11 rulemaking, and there codified it to a sufficient  
12 degree to press forward."

13 But of course we said in the paper, and I  
14 would reiterate here, many times when we are in  
15 dialogue with licensees or ex-licensees, they are  
16 cautious or even reluctant to proceed on tentative  
17 standards or uncodified standards, standards--  
18 criteria that are subject to change.

19 COMMISSIONER CURTISS: Bob, are you going to  
20 get to the issue of the impact of the EPA initiative  
21 and how that -- what the status of that is?

22 MR. BERNERO: Well, when we get to the end,  
23 the superfund, I figured it would certainly come up.

24 The second one on the page here is a good  
25 one. I think it's fairly recent to bring it to the

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1 Commission's attention. We're using the word  
2 "timeliness," and perhaps when I talk about it the  
3 best thing to look back on is the Nine Mile Point Unit  
4 1 incident of some months ago where a basement room  
5 was found with a lot of liquid and solid radioactive  
6 waste, and it had been in that condition for some  
7 years.

8 The question is naturally asked, "My  
9 goodness, why didn't you clean that up?" But if you  
10 ask the formal question, "What regulation or what  
11 standard is violated by not cleaning it up," you have  
12 to fall back to something like good housekeeping or  
13 good radiological health practice. There's no  
14 explicit standard in our regulations or in the reg.  
15 guides that go with them that explicitly says, "Here  
16 are criteria to judge when a block of contamination or  
17 a contaminated building should be disposed of in some  
18 orderly way." You know, within three years of license  
19 termination or anything like that. You just don't  
20 have that. It is deferred into planning documents to  
21 be submitted for review.

22 That looks like it could be a problem in  
23 that we don't have good standards to require or good  
24 criteria to apply leading to a requirement that says,  
25 "Clean this up in two years," or, "Clean this up in

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1 three years," some reasonable time.

2 We run into this from time to time. Right  
3 now there is a concern on uranium mills because the  
4 uranium mills for the most part are sitting dormant.  
5 They have no market. The uranium market is  
6 essentially zero in the United States, and as a result  
7 the uranium mill is sitting in a standby mode without  
8 permanently stabilized tailings and all of that, and  
9 they can sit in that stabilized limbo-like mode for  
10 many years.

11 I'm not saying that we should shut them down  
12 and close them out and seal the sites, but we should  
13 consider that because among other people, the  
14 Environmental Protection Agency would like to see that  
15 after two years or three years that's done, that they  
16 shouldn't sit in a standby mode.

17 CHAIRMAN CARR: Well, is there a major  
18 problem with saying, "Clean it up in three years or  
19 apply for a waiver"?

20 MR. BERNERO: We don't have enough  
21 information right now to say that in general for  
22 everything.

23 CHAIRMAN CARR: You don't have to have any  
24 information to say that."

25 MR. BERNERO: Yes. No. I think we need to

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1 think through the logic and the criteria. A little  
2 bit later I was going to talk about three examples  
3 that would illustrate what kind of thoughts go into  
4 this. I think it's an important thing for us to do  
5 and we don't have for you a clear agenda of how to  
6 think this through and when to set it down as to  
7 criteria and rulemaking.

8 MR. TAYLOR: It might end up with something  
9 not straightforward.

10 CHAIRMAN CARR: It's going to be arbitrary  
11 anyway.

12 MR. TAYLOR: Yes, to a degree it will.

13 MR. BERNERO: It could be that simple.

14 COMMISSIONER CURTISS: Does this strategy  
15 cover sites that are addressed under the Mill Tailings  
16 Act? Does it extend beyond the 34 that have been  
17 identified to include those that are subject to a  
18 regulatory scheme already such as that?

19 MR. BERNERO: No, not really. This program  
20 does cover sites that have similar technical problems,  
21 you know source material, naturally occurring  
22 radioactive material that we classify under the AEA as  
23 source, but not uranium mill tailings sites as such.  
24 Although there's nothing in logic that would prevent  
25 their inclusion in this program.

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1 COMMISSIONER CURTISS: No, I see the logical  
2 connection, the parallel.

3 MR. BERNERO: Yes.

4 COMMISSIONER CURTISS: It just struck me  
5 that --

6 MR. BERNERO: But right now we're talking  
7 about material sites.

8 COMMISSIONER CURTISS: Okay. Yes.

9 MR. BERNERO: And we aren't talking about  
10 reactor sites here, but as I'll cite with one example,  
11 the logic applies and it might entail a mixture of  
12 reactor sites and material sites. I'll be talking on  
13 that.

14 (Slide) Let me have slide 6, please.

15 The major actions, this is really now  
16 looking forward, what's going on now, what should we  
17 emphasize, where should we go from here. The first  
18 thing to note, we have our new decommissioning rules  
19 in place in 1988 and, as you recall, there's a rather  
20 broad formula for who does what, financial assurance,  
21 the filing of plans and the timing thereof. A  
22 milestone of interest is contained therein and this  
23 could add to this rough analog of superfund because  
24 right now we're expecting, starting in July, the end  
25 of July of 1990, that we will hear from licensees as

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1 to how they will fulfill the obligations of the new  
2 decommissioning rules, which we think are good rules.  
3 You know, that's a good code that we have out there at  
4 long last.

5 We don't know how many, if any, of the  
6 material licensees might show up come July and say,  
7 "It's a very nice rule, but I can't meet it. I don't  
8 have enough money." Or, "I don't have enough money to  
9 meet it, but if you let me operate on some tailor made  
10 deal for the next five years and I'll put away two  
11 percent of the profits and ten percent of the overhead  
12 and some other negotiated deal, I'll build up a trust  
13 fund or an escrow that can do something." We don't  
14 know how many licensees may come up with something  
15 like that.

16 In fact, it might even be so extreme that we  
17 would discover material licensees just threw up the  
18 towel and went out of business and left the place. It  
19 could be that extreme, we just don't know. So, we're  
20 on our guard that comes July 1990, we need to look  
21 carefully at those responses and be quick to recognize  
22 and quick to deal with the potential additions to this  
23 list of troublesome or difficult sites.

24 In that context, we're developing criteria  
25 for what should we do and how should we do it when we

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1 see something like that.

2 CHAIRMAN CARR: They're all due in July?

3 MR. BERNERO: Yes, they start coming in--  
4 there's a timing in the rule, July 27th or something  
5 like that.

6 The second thing we referred to earlier on  
7 slide 6 here, the residual radioactivity criteria.  
8 We're working with high priority on this with the  
9 Office of Research, the technical basis of it. And,  
10 of course, as you all know from the newspaper, the  
11 Bier V Report is out and we're looking very closely to  
12 have the solid logical basis, the radiation safety  
13 policy and the attended standard. We expect this to  
14 be a controversial area, of course, and that's why we  
15 indicate here rulemaking running as long as two years.  
16 But what we're trying to do, and we're confident that  
17 that's your intention, get that logical policy basis  
18 in place and get those interim residual activity  
19 criteria in place and press on to codify them, to move  
20 forward so that we do have properly codified residual  
21 activity criteria.

22 CHAIRMAN CARR: What's the span on the  
23 shortest time that rulemaking can take?

24 MR. BERNERO: I would defer to Research to  
25 make a comment on that. I'd guess a year.

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1 MR. TAYLOR: I think we'd have to come back  
2 to you with that, sir, really.

3 CHAIRMAN CARR: To get the bounds on it  
4 anyway.

5 MR. TAYLOR: Yes. We'll do that.

6 COMMISSIONER REMICK: How about the  
7 exemption policy statement? Is the staff looking at  
8 any possible impact of the Bier V Report on what you  
9 sent to us?

10 MR. BERNERO: Yes. Yes, we are.

11 MR. TAYLOR: We hope to have a brief paper  
12 in relationship to the exemption policy and the Bier V  
13 Report certainly after the beginning of the year. And  
14 then we'll have to take a deeper look at that report  
15 to see its effect on other things and so forth. But  
16 staff is planning to move. I've talked to the offices  
17 to give you a paper as soon as possible on that, get  
18 the relationship between that report and what you have  
19 in front of you.

20 COMMISSIONER CURTISS: Bob, on the residual  
21 radioactivity criteria issue, what's the status of  
22 EPA's effort?

23 MR. BERNERO: EPA is -- this, as such,  
24 there's a rather low level, long-term strategy. They  
25 have an activity that meets about every six months.

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1 We have a representative that goes to that, but it's  
2 not any near term action.

3 COMMISSIONER CURTISS: Do they intend to  
4 develop criteria in this area?

5 MR. BERNERO: Yes. I think it's fair to say  
6 yes, but they are not committed to a very urgent  
7 schedule.

8 COMMISSIONER CURTISS: And when they develop  
9 those criteria, what impact will they have on what  
10 we're doing in this area?

11 MR. BERNERO: It has the potential, I think  
12 legally, of overturning or superceding our criteria,  
13 or at least forcing some evaluation to determine which  
14 one --

15 CHAIRMAN CARR: Well, the worst case, it  
16 could require additional cleanup.

17 MR. BERNERO: Yes. If they came out with a  
18 stricter standard --

19 CHAIRMAN CARR: But that's -- my personal  
20 opinion is whoever gets their standard on the street  
21 first is probably going to win that case. They'll  
22 have to make a case for a stricter cleanup.

23 MR. BERNERO: Yes. Show cause why it should  
24 be a factor of five stricter or something like that.  
25 But we get a lot of resistance when we talk to

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1 licensees or ex-licensees out of fear of that, that  
2 after I finish the cleanup, you're going to make me  
3 come back here and scarf off another layer.

4 COMMISSIONER CURTISS: That's the way I read  
5 your SECY paper.

6 CHAIRMAN CARR: But that's just to their  
7 benefit. At least they've gone part way there and  
8 they'll have satisfied one criteria.

9 MR. TAYLOR: That is in the paper.

10 MR. BERNERO: Yes.

11 MR. TAYLOR: The concern is there.

12 MR. BERNERO: Yes. We encounter that  
13 concern regularly.

14 COMMISSIONER CURTISS: But it's not clear to  
15 me that it's a more efficient and beneficial thing for  
16 the licensees to do, to go in and clean up a site and  
17 do all the earth moving and whatever they have to do,  
18 contracting, to actually clean up to meet our  
19 standards and then subsequently, at some future point,  
20 having gone halfway there, it will just cost that much  
21 more again.

22 MR. BERNERO: No. What we would argue is  
23 perhaps they could be grandfathered or the recognition  
24 that a lot of such activity was done would throw a  
25 burden of proof onto the more strict standard to

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1 really show why it's necessary to go another nine  
2 yards or whatever it is to go. That certainly has  
3 some force to make that argument. But at the same  
4 time, in the Synar hearing, we did commit to, in all  
5 of our license closeouts, that we would insert an  
6 escape clause or a return clause that would say,  
7 "We're prepared to close you out, but we reserve the  
8 right to come back to make you clean up further."

9 COMMISSIONER CURTISS: I understand that.  
10 Is this that generally applicable environmental  
11 standard that they're promulgating?

12 MR. BERNERO: I believe it would be.

13 COMMISSIONER CURTISS: Are we legally  
14 obligated to incorporate that in our regulations and  
15 would it --

16 MR. BERNERO: Yes. Yes.

17 COMMISSIONER CURTISS: In effect then it's  
18 become an enforceable obligation, the way I see it.

19 MR. BERNERO: Yes, unless there was some  
20 sort of litigative persuasion that said it's not  
21 justified to be further or more strict than the NRC  
22 already --

23 COMMISSIONER ROGERS: Well, that can raise  
24 hob with all kinds of things. How do you ever  
25 transfer a piece of property after you've cleaned it

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1 up, and go out of business? You can't go out of  
2 business because --

3 MR. BERNERO: You've got a hanging  
4 obligation. In fact, that is a problem. This  
5 residual obligation of cleanup has turned out to be a  
6 major factor in real estate, not just with radioactive  
7 materials, but --

8 COMMISSIONER ROGERS: Absolutely.

9 COMMISSIONER CURTISS: Do we have any idea  
10 how long that obligation is going to hang, how long  
11 EPA is going to take to do this?

12 MR. BERNERO: Well, let me tell you, I think  
13 I've said it at this table before. I've had this very  
14 dialogue in the mid-1970s on the very same subject  
15 about the very same agency and their timing. I  
16 wouldn't be at all surprised that ten years from now  
17 we would be talking and still wondering.

18 MR. MALSCH: But I think on a related  
19 subject, that EPA in related areas is moving forward  
20 more briskly. For example, groundwater protection requirements.

21 MR. BERNERO: Yes. Yes.

22 MR. MALSCH: So, there's related things  
23 going on that may bring fruition before EPA comes up  
24 with the grand decontamination standards. So, there  
25 could a more short-term effect on our program than the

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1 possibility in the future of these decontamination  
2 requirements.

3 MR. TAYLOR: By our proceeding with the  
4 policy issues and the potential rulemaking that may  
5 come from the BRC or exemption policy, we then will  
6 have a framework to try to work with EPA to reach a  
7 conclusion on this subject.

8 MR. BERNERO: Yes.

9 MR. TAYLOR: But it remains at this time --

10 COMMISSIONER CURTISS: As we all are  
11 painfully aware, we've had a number of cases where  
12 this exact problem has cropped up, where we're ready  
13 to go forward with the standards, maybe not as quickly  
14 as we would have liked, but whether it's low level  
15 waste or high level waste or mill tailings or now in  
16 this area and where we are awaiting EPA action to  
17 promulgate standards, that frankly I think, given the  
18 disconnect, it's going to lead to a more expensive  
19 program, to the kinds of problems that Commissioner  
20 Rogers has alluded to and to the same kinds of  
21 frustrations that I think we've seen in other areas.

22 I guess I would encourage you when we get  
23 through with the establishment of our standards to the  
24 extent that you think we've done what's necessary to  
25 be done, and I take it you will when you reach that

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1 point, maybe we ought to take a look at whether that,  
2 from a regulatory standpoint, from the federal  
3 government's standpoint, ought to provide or ought to  
4 be viewed as a sufficient and adequate basis to go  
5 forward without leaving this hanging over the  
6 licensees for what appears to me to be an  
7 indeterminate period of time.

8 MR. TAYLOR: I think we agree.

9 COMMISSIONER CURTISS: In other words,  
10 encourage EPA either to get on with it now or in the  
11 absence of a standard, if we go forward and have a  
12 standard that we think is sufficient, perhaps  
13 encourage them to focus their efforts elsewhere.

14 COMMISSIONER ROGERS: I hope we can really  
15 do something here because the whole notion of holding  
16 the licensee responsible at a later date for something  
17 that we've already signed off on, it strikes me as  
18 totally unacceptable a policy, totally unacceptable  
19 public policy. I just hope we can do something to  
20 avoid that because I think that's very irresponsible.  
21 I think we just --

22 MR. BERNERO: I hope that the momentum --

23 COMMISSIONER ROGERS: -- wrong place,  
24 putting the responsibility in the wrong place. If we  
25 can't decide what we want as a government, we can't

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1 just go back to the well on these things. I hope we  
2 can resolve this in some way.

3 MR. BERNERO: If we have a well crafted  
4 policy and a well derived body of standards ourselves,  
5 we can generate a momentum that I think will be very  
6 helpful in focusing on the thing and resolving it and  
7 I hope once and for all rather than lingering like  
8 this for years.

9 COMMISSIONER CURTISS: I'm not confident  
10 we've had that same kind of success in other areas  
11 where this very same problem has come up. We've had  
12 the momentum to establish the low level waste  
13 standards, we've had the momentum to establish with  
14 EPA's participation 40 CFR 190 and the Mill Tailing  
15 Standards. In all of those cases, we've had  
16 considerable interaction with the EPA and we've  
17 reached the point where unfortunately the momentum  
18 hasn't carried us forward to the conclusion that  
19 you're shooting for here.

20 Whatever it is that we need to do, I guess I  
21 would encourage you to -- consistent with what  
22 Commissioner Rogers has said, we need to settle it, as  
23 the federal government establish what those standards  
24 are and get on with the cleanup.

25 CHAIRMAN CARR: Neither of you are proposing

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1 that we do nothing until EPA gets --

2 MR. BERNERO: No, no.

3 MR. TAYLOR: No.

4 COMMISSIONER CURTISS: I think we ought to  
5 take a look at the question of whether having  
6 established the standards there's something that we  
7 can do more than simply saying, "Now, once you comply  
8 with the standards, we're going to leave you subject  
9 to whatever EPA might develop in the future."

10 MR. TAYLOR: There's a hollow ring to that.

11 COMMISSIONER CURTISS: There sure is. I  
12 think it's, as Ken has said --

13 CHAIRMAN CARR: I mean it's in the law. I'm  
14 not sure we can do anything else at this point in time  
15 though.

16 COMMISSIONER CURTISS: If it takes changing  
17 the law, I'm prepared to do that, if that solves the  
18 problem.

19 MR. BERNERO: Get the EDO to sign those  
20 license closeouts.

21 COMMISSIONER ROGERS: I just don't think we  
22 ought to just accept that this is a reasonable  
23 approach.

24 MR. BERNERO: Oh, no, no. It's very, very  
25 uncomfortable.

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1 MR. TAYLOR: I don't think we intend to  
2 simply, but ~~because~~ we think we ought to proceed on this  
3 course, to establish our own criteria.

4 MR. BERNERO: It's a serious policy issue.

5 COMMISSIONER CURTISS: I endorse the  
6 establishment of the Commission's criteria. It seems  
7 to me that's something that's the key to moving  
8 forward on this. The only question that I'm raising  
9 has to do with the back end of it. Once we've  
10 established the criteria and signed off that the  
11 licensees or former licensees have met those criteria,  
12 what do we say about the continuing obligation to meet  
13 the yet to be promulgated EPA standard? That's the  
14 point on which I have some questions.

15 MR. TAYLOR: We'll bring this to the  
16 Commission because I'm sure we're going to need your  
17 assistance and direction to solve this problem.

18 COMMISSIONER CURTISS: Okay. Yes.

19 MR. TAYLOR: It's a big problem.

20 MR. BERNERO: (Slide) May I have slide 7,  
21 please?

22 To carry on with the actions -- and by the  
23 way, I don't suggest that these are all of the same  
24 magnitude. They're sort of in decreasing order of  
25 magnitude. On slide 7, the rulemaking to require

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1 licensees to maintain a list of decommissioning  
2 documents in one document, that comes out of the Synar  
3 hearing. You should be aware though that the  
4 decommissioning rule code or codex that was going  
5 forward has attached to it a rather large and very  
6 useful code of regulatory guidance and so forth on  
7 document control, periodic verifications, inspections,  
8 things like that. What's happening, all of that  
9 guidance was in the public comment cycle and iteration  
10 and the Office of Research is now pulling together all  
11 of those comments as well as this rulemaking activity  
12 to get a coordinated agenda and program together.  
13 You'll be hearing of that in January or so of 1990.  
14 And all of this is ripe.

15 I don't foresee any difficulty in doing  
16 this. It's just coordinating it all because the  
17 guidance that was already on the street had things  
18 like annual reviews and coordination of records and  
19 verifications and audits already in it.

20 Another item here, the review of licenses,  
21 this is the Synar commitment to go to that interregnum  
22 from 1965 to 1981 of licenses that were terminated to  
23 see if we have any more problems like this out there.  
24 Recall that earlier on we went back at the beginning  
25 of the NRC, thus in the late '70s, we did a survey of

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1 all the licenses that had been terminated before 1965,  
2 the really old things, and we dug up some of these old  
3 sites from that. That's how we started this list.

4 Now, we've committed to and have it  
5 budgeted, you'll see it in the program plan for NMSS,  
6 that starting in 1991 we have a program to  
7 systematically review all of the license dockets from  
8 that time, 1965 through 1981, at which time the  
9 decommissioning and on-site burial rules changed to  
10 give you a greater level of confidence that you  
11 wouldn't have some unknown residues.

12 Now, that, we believe, is going to be about  
13 20,000 dockets. We really don't know how many  
14 problems, if any, we'll get out of that search. We've  
15 talked before, we've speculated that we might get 10  
16 or 15 or 20 or 12 or a number like that. If we found  
17 a fraction or a percentage sample similar to what we  
18 found before, it would be somewhere between ten and 20  
19 sites would show up out of that search.

20 We have some procedural rulemaking that I  
21 list here about procedures for issuing orders to  
22 unlicensed persons. The example I cited before for  
23 Commissioner Remick, the Westlake Landfill, the people  
24 that own that landfill never had a license. The  
25 material on-site came there as waste material, was

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1 dumped on the site and one gets into rather peculiar  
2 requirements when the wrong person has it and  
3 especially when you have concentrations that are not  
4 quite high enough to meet the threshold of explicit  
5 licensing. So, that gets to be a difficulty.

6 (Slide) May I have slide 8?

7 The issues where we need further study, I  
8 wanted to come back to this business of timeliness or  
9 timing requirements for decontamination and  
10 decommissioning. It's very easy to understand in  
11 reactor licensing and reactor decommissioning  
12 virtually everyone automatically thinks that if you go  
13 to the Dresden reactor site where the old Dresden Unit  
14 1 is sitting there, but Dresden 2 and Dresden 3, which  
15 are large modern or more modern reactors, are  
16 operating, one tends to think that you'll run 2 and 3  
17 to the end of their lives which ought to be more or  
18 less simultaneous and then decommission all three at  
19 once. There's a tendency to think that way and a  
20 tendency for licensees to plan it that way, even  
21 though in some instances the Unit 1 of older vintage  
22 now shut down is not really intimately connected to or  
23 related to the Unit 2.

24 We just go to the Fermi site, Fermi 1 and  
25 Fermi 2. They're within eyeball distance, but they're

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1 not really siamese twins or anything like that.

2 COMMISSIONER REMICK: Peach Bottom.

3 MR. BERNERO: Yes, and Peach Bottom is  
4 similar.

5 Now, three cases which illustrate the  
6 timing, I mentioned earlier Nine Mile Point Unit 1.  
7 It is a major licensed activity that has what you  
8 could call a major spill or a major contamination.  
9 Should we have criteria to deal with that?

10 A second example NFS Erwin. That's the  
11 high-enriched uranium fuel plant. It used to do  
12 plutonium work. It has a major facility, set of  
13 buildings, one major building, that was related to  
14 plutonium work, is contaminated and is no longer in  
15 use and we've been jawboning them for years to  
16 decommission that building, to consolidate and package  
17 the transuranic waste and to put it into temporary  
18 storage -- as you know they don't have a place to send  
19 it right now -- and to decommission the building back  
20 to some pristine or releasable configuration, even  
21 though the operation is still a major material  
22 license.

23 Should we have criteria that go into a site  
24 like that and say, "That portion of your licensed  
25 activity is no longer in use and by time certain you

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1 ought to clean it up and get rid of it so that one  
2 doesn't collect, one after the other, a bunch of old  
3 plutonium buildings?"

4 In a similar vein, there's a site that Jack  
5 Martin and I have been discussing as a microcosm of  
6 this issue. That's the General Electric Valacedos  
7 site. It's back in Contra Costa County, behind the  
8 Bay. At the Valacedos site, there are four reactors,  
9 only one of which is now operating. One, the GE test  
10 reactor has been shut down since 1977. The other two  
11 have been shut down probably at least 20 years.  
12 They're some of the first reactors ever licensed.  
13 There are material licenses on that site. We used to  
14 have a license for plutonium R&D fuel fabrication  
15 facility. The state -- that's an agreement state, of  
16 course -- the state has a number of material licenses  
17 on that site, I believe.

18 When you look at a site like that, should  
19 there be criteria for integrated planning? Should  
20 there be criteria for timing? How long is it  
21 acceptable for the GE Valacedos experimental boiling  
22 water reactor to sit in mothballs? You're really kind  
23 of holding your tongue in your cheek if you want to  
24 argue cobalt 60 decay for that thing because it's been  
25 shut down for so long and how much did it have in the

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1 first place and so forth.

2 So, you see, there is a spectrum of issues  
3 here. It may be so simple as identifying an activity,  
4 whether a building or a spill or a licensed activity  
5 and say, "When you terminate operations by time  
6 certain, clean it up," and just put a time on it. It  
7 may be that simple. It may not.

8 But this is an area where I think we need to  
9 formulate thoughts, get logic together in order to  
10 deal with it and decide what to do.

11 COMMISSIONER REMICK: One of the  
12 complications I can see with what you're talking about  
13 is the question of occupational exposure. There might  
14 be times when it pays to let it sit for 20 years just  
15 from occupational exposure.

16 MR. BERNERO: Yes.

17 COMMISSIONER REMICK: I'm sympathetic to  
18 what you're saying, but there are other  
19 considerations.

20 MR. BERNERO: Yes. Yes. Our experience  
21 though is a cost deferred is a cost saved. Many, many  
22 licensees would rather postpone decommissioning to the  
23 maximum extent possible because it is future money.  
24 It's cheaper to do it in the future and it doesn't  
25 impinge on cash flow today. But, of course, there's

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1 that increased risk that you get one site after the  
2 other and you will run into sites where the present  
3 licensed activity is lilliputian compared to the size  
4 of the remedial action needed at the site.

5 CHAIRMAN CARR: But I don't see any problem  
6 with putting the onus to make that decision on the  
7 operator by just telling him, "We want them all  
8 cleaned up in X years. If you can't make that, make a  
9 case to us so we can decide whether your case is good  
10 or not."

11 MR. BERNERO: Yes.

12 CHAIRMAN CARR: That doesn't require a lot  
13 of study.

14 MR. BERNERO: Yes. It might very well be  
15 that simple.

16 MR. TAYLOR: Tell us why it might be better  
17 to wait.

18 MR. BERNERO: Show cause why it shouldn't be  
19 three years or whatever.

20 COMMISSIONER CURTISS: There are  
21 circumstances where -- I understand that this doesn't  
22 apply to the uranium mill licensees, but there is a  
23 case where those, as I understand it, the mill piles  
24 have been kept open, not because they simply want to  
25 defer decommissioning but because they'd like to wait

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1 and see if the price of uranium gets above \$10.00 a  
2 pound. If it does, they may get back into the mining  
3 business. So, it does seem to me that the kind of  
4 latitude that you're talking about here needs to  
5 account for situations like that in the licenses that  
6 this would cover.

7 MR. BERNERO: Yes. Yes. Those in  
8 particular we could be reeking economic hardship  
9 without justification there.

10 The other things on here, reopening licenses  
11 after termination, these are lesser issues but we have  
12 discussed the Kerr McGee Cushing, Oklahoma site where  
13 there are really two issues when you do look at the  
14 particulars of that site. There's an old fuel  
15 building and there is building contamination, sort of  
16 contamination you associate with a building that  
17 warrants remedial action, and then there is ground or  
18 pit, lagoon kind of contamination and there it's  
19 complicated by being mixed waste. At least it's mixed  
20 with organic materials. Whether it's full RCRA is not  
21 certain.

22 So, there's a question raised there, should  
23 one reopen a license or rely on some other remedial  
24 regulatory control. The superfund interaction comes  
25 up in that one and in Westlake Landfill. The

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1       superfund interaction has these two components where  
2       you can have radioactive material mixed with superfund  
3       material so that the AEA jurisdiction is coming in and  
4       is looking at the same body of residue as the  
5       superfund, or the Westlake Landfill which is like a  
6       large rectangle only one corner of which has AEA waste  
7       on it. If NRC asserts its regulatory authority at  
8       Westlake Landfill, as we are doing, we would be  
9       cleaning up only the south 40 or something, some  
10      little corner of it and EPA's jurisdiction would be  
11      looking at the rest of the site, that they would be  
12      separable. So, we have both conditions to consider in  
13      superfund interaction.

14               (Slide) So, I have slide 9, please?

15              Where do we go from here? Well, to say  
16      again, preaching to the choir, continue to effort to  
17      develop residual radioactivity criteria. That is a  
18      high priority. We all feel the need for that. We all  
19      want to press forward and do that and that is our  
20      number one priority here.

21              The timeliness issue, we would like to  
22      address that and develop a plan for it in a schedule.  
23      We're working on that so that we could have something  
24      thought through. Once again, it could be as simple  
25      as, here's the timing and shift the burden of proof to

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1 show a good reason why it shouldn't be met. We would  
2 like to do that in this coming calendar year and have  
3 it behind us.

4 Our review of licenses terminated after  
5 1965, we're starting that next year.

6 (Slide) May I have slide 10?

7 By next year I mean 1991, not 1990. It  
8 would be fiscal '91.

9 Slide 10 gets us into some actions. The  
10 implementing the current regulations, that's the  
11 financial requirements. The summer of 1990 is when we  
12 start really getting the information about the current  
13 licensees, whether they're going to successfully  
14 satisfy the requirements. In that context, we are  
15 apprehensive that we might start picking up more  
16 troublesome sites and we're preparing criteria to deal  
17 with that, to identify them promptly and get them into  
18 this current list of contaminated sites. We have an  
19 agenda to what we say here, resolve current  
20 contaminated sites. But as you undoubtedly would  
21 recognize, this is an issue or a problem that's going  
22 to be with us for a goodly time to come. These things  
23 don't clean up in three months. They typically take  
24 seasons and years.

25 As a result, we're trying to get

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1 organizational control and organizational visibility  
2 into a more explicit program. The senior staff and I  
3 have been debating a proper name for such a program  
4 for some weeks now and no name survives more than 24  
5 hours. But something like a problem sites program or  
6 a site decontamination program whereby we would have  
7 at any time a current list. There was a SECY paper in  
8 1988. We have a more current version of that in-hand  
9 now that we use. It's not 31 sites, it's 39 sites.  
10 And at any given time, we need the management control  
11 of having a current list, a current list of properly  
12 set priorities, a current agenda for what needs to be  
13 worked off this year, current status. That needs to  
14 be in hand and we're working to do that.

15 Now, Mr. Chairman, you set a priority or a  
16 request for -- I think it was the top ten that you  
17 asked for early in 1990. Our hope is to have all of  
18 them prioritized, which will certainly have the  
19 request you made satisfied in that time.

20 Then, lastly, we think it is appropriate to  
21 pursue the dialogue with EPA on the superfund issues,  
22 on what procedures or what mechanisms to follow with  
23 the superfund. I think it would be worthwhile with  
24 that to put up -- back up slide 12, please.

25 (Slide) If you look to superfund, there are

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1 complexities. I think they're unavoidable and we have  
2 to come to grips with them. We want to avoid  
3 conflicting dual regulation. Remember the examples I  
4 cited. Where things would be separable, it would be  
5 good to make them separable, I think. The Westlake  
6 Landfill, if we could bit off an Atomic Energy Act  
7 piece of residue, a section, two acres or whatever it  
8 is, and resolve that under AEA jurisdiction by the NRC  
9 and then if the rest of it is superfund it is at least  
10 simplified. The owner, whatever other parties are  
11 involved, at least they're separated from dual  
12 regulation, at least to the maximum extent possible.

13 Residual radioactivity standards here, if  
14 we're in a superfund site, there would be an evident  
15 question if EPA read residual activity, radioactivity  
16 standards differently than we did. They, of course,  
17 have non-radiological hazards and the expertise and  
18 the responsibility and we do not deal with that.

19 We also have a difficulty in the regulatory  
20 standard, in that the Atomic Energy Act doesn't give  
21 us the reach, the arms length of reach that EPA has.  
22 The ability to go in and clean up a site and then go  
23 hit the parties, for instance, and get triple charges  
24 or triple cost penalty levying. They have statutory  
25 authority in superfund space that we don't have. And

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1 it remains that under certain circumstances on NRC  
2 action -- and one recalls the J.C. Haines case where  
3 there was no question of our authority and our ability  
4 to assert our authority, but the utility of doing so  
5 was seriously doubtful because the person wasn't  
6 responsible and didn't have the money and it was a  
7 mess, and it was a safety hazard.

8 And so we, under some circumstances, use  
9 superfund as a fall-back position, and we need to  
10 reach agreement with EPA on how to do things like this  
11 together or severally, as the case may be.

12 And therefore, to go back to the paper from  
13 the General Counsel of six months ago or four months  
14 ago, I think we really ought to move forward with that  
15 kind of dialogue.

16 COMMISSIONER CURTISS: Well, as you've got  
17 that slide up, I have been one of the, I guess,  
18 skeptics on extending our dialogue with the EPA on  
19 superfund for a couple of reasons.

20 MR. BERNERO: I sense that.

21 COMMISSIONER CURTISS: Not just under  
22 superfund, but let me just limit the discussion to  
23 that, because I do have some questions. The fact is  
24 that the sites that they have listed under superfund  
25 to date, the two mill tailing sites in New Mexico and

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1 the one in Colorado, again don't give me the kind of  
2 confidence that we've got the same perspective about  
3 what a superfund would entail.

4 And I understand you're proposing an MOU  
5 with EPA, but the fact is that we've got three sites  
6 there, all of which are subject to a detailed  
7 regulatory program under the Mill Tailings Act with  
8 either direct NRC authority in the case of New Mexico  
9 or indirect agreement state authority where a party  
10 who's a current licensee is financially capable and  
11 apparently willing to comply with the regulatory  
12 requirements that we have imposed under UMTRICA.

13 And if what you're proposing here is an  
14 approach that would limit the extension of superfund  
15 to the hazardous component or corner of a site, first;  
16 secondly, where we've got a licensee that is either no  
17 longer present or financially incapable of cleaning up  
18 the site, I guess I'd be less troubled by that, and  
19 particularly if that's the way EPA views the potential  
20 application of superfund.

21 But I have been skeptical of that, because  
22 I've seen three instances -- and there are only three  
23 that we're talking about where we've got licensed  
24 facilities -- where none of the conditions that you've  
25 articulated here for seeking superfund applying to

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1 these sites was even discussed, much less met at those  
2 three sites. And that's why I've been skeptical of  
3 the notion to go too quickly too far with the  
4 application of superfund.

5 It also involves some complications that I  
6 don't think we've fully considered. The fact is,  
7 superfund has a different clean-up standard than we  
8 have under the Atomic Energy Act. And it's a very  
9 stringent one. I'm not saying that's inappropriate,  
10 but we ought to recognize that the standard is a  
11 different one.

12 Secondly, it provides in many cases the  
13 right for private causes of action or state action  
14 that may go way beyond what we would do typically  
15 under our Atomic Energy Act authority. And it seems  
16 to me that before we move in that direction, and  
17 particularly before we identify a specific site that  
18 would meet those criteria, that those questions ought  
19 to be thoroughly explored. And the problems that we  
20 had with EPA applying superfund in the first three  
21 instances to the mill tailing sites ought to be  
22 resolved, clarified, and understood between the two  
23 agencies before we embark upon a further extension of  
24 superfund without an understanding of the ground  
25 rules.

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1 MR. BERNERO: A point to be made, though, is  
2 the Church Rock mill and the Home State mill MOUs that  
3 were in the first case proposed and approved and in  
4 the second case on hold. These are instances where I  
5 would say there's a procedural barrier to separating  
6 the jurisdiction. If those two mills had been on NRC  
7 license jurisdiction throughout, EPA would not be  
8 there with the superfund. They were an agreement  
9 state that got out of the business of being an  
10 agreement state and requested superfund, and that's  
11 why we're dual. They are a procedural barrier and  
12 probably most right for a negotiated procedural  
13 separation.

14 In these old-timer sites that we're talking  
15 about here, we have this mixture of things, of  
16 circumstances, that makes it a lot less clean than the  
17 Westlake landfill, as I cited, where we might have a  
18 clean way to say this is an NRC remedial action site  
19 and the rest of that is a superfund site and ne'er the  
20 twain shall meet.

21 In other cases, like Kerr McGee Cushing, the  
22 stuff is mixed together and it doesn't lend itself to  
23 that clean delineation. And both of those, by the  
24 way, are proposed on superfund now.

25 COMMISSIONER CURTISS: I understand that the

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1 sites we're talking about here involve different  
2 considerations, but my anxiety about extending  
3 superfund in areas that may create precedence is  
4 compounded by the fact that the decision that was made  
5 on the existing sites that are listed under superfund  
6 was one that was made with very little consultation.

7 The distinction between an agreement state  
8 program and a direct federally-regulated site that  
9 they drew in both the case in New Mexico and Colorado  
10 was a distinction that I think is incorrect and  
11 misapprehends the nature of our agreement state  
12 program. I've articulated that view before. The  
13 point is that we now have a situation where the sites  
14 that are listed are currently licensed sites with  
15 financially capable licensees present, with either  
16 direct NRC authority in the case of New Mexico or  
17 agreement state authority in the case of Colorado.

18 And in view of that history, I think we  
19 ought to be cautious in moving forward and perhaps  
20 even to the point of waiting until we see if there is  
21 a particular site that meets those conditions and then  
22 come back to the Commission and identify the site and  
23 talk about how we move forward.

24 CHAIRMAN CARR: Well, to pick up on that  
25 point, there's certainly not enough information in

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1 this paper to make me confident that we're ready to  
2 talk to superfund -- I mean, to EPA about superfund,  
3 which was why we held up the previous paper was so we  
4 could figure out where we were before we went to talk  
5 to them. And I don't feel we're at that point yet.

6 COMMISSIONER CURTISS: We'd have -- I don't  
7 mean to confuse the issue, but I think we'd have--  
8 we'd be able to focus on this issue more clearly.  
9 You've articulated sort of the generic reasons why  
10 superfund would be appropriate: a licensee that -- a  
11 site that maybe doesn't have a licensee at all, or  
12 where the licensee is financially incapable or  
13 unwilling to clean up the site; a case where you may  
14 have a corner that's chemical, non-Atomic Energy Act  
15 waste, or maybe the mixed waste situation. I guess  
16 what --

17 CHAIRMAN CARR: Well, you can think of a lot  
18 of hypothetical problems, but I'd rather talk about  
19 real problems.

20 COMMISSIONER CURTISS: That's my point. It  
21 seems to me --

22 CHAIRMAN CARR: None of those may apply.

23 COMMISSIONER CURTISS: -- if we reach --

24 MR. BERNERO: -- the spectrum right here.

25 COMMISSIONER CURTISS: -- if we reach that

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1 point, and you've got a site where there is a licensee  
2 that is financially incapable or unwilling to do the  
3 job, I'd like to see the details of that particular  
4 site. Because, as I say, in view of the experience  
5 with superfund, the three licensed sites that they've  
6 listed now under superfund, I guess I'd like to  
7 reiterate the Chairman's suggestion that we have a  
8 more concrete idea of what's before us in terms of a  
9 particular site, and in that context what the  
10 rationale is for going to EPA and requesting  
11 application of superfund.

12 CHAIRMAN CARR: I have no warm feeling that  
13 any of our sites that'd make the superfund list are  
14 going to be high enough on the list to get any action.

15 MR. BERNERO: Yes. That's one of the --

16 COMMISSIONER CURTISS: Good point.

17 CHAIRMAN CARR: I don't want to just leave  
18 them out there in limbo.

19 MR. TAYLOR: I believe that leaves us to  
20 bring to the Commission the specifics of a site and  
21 the problems. And after, say -- this may go on for a  
22 couple of years. After going through a number of  
23 them, perhaps we will have hit most of the  
24 combinations of either the duality of the site, the  
25 mixed waste, the lack of financial capability, and we

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1 may have a set of cases and examples that we can  
2 develop the appropriate guidance to --

3 COMMISSIONER CURTISS: On the point about  
4 the scope of the superfund authority, it is a very  
5 pervasive statutory scheme that among other things  
6 involves joint and several liability that can catch  
7 anybody who puts any barrel of waste into the site.  
8 And I do think in that context superfund does give the  
9 federal government some authorities to do some things  
10 that might bring about quicker action.

11 Two comments. One, I was pleased to see  
12 that in General Counsel's view we have authority to  
13 issue orders even for non-licensees where we think  
14 there is a health and safety risk. And I encourage  
15 you as you look at the situation to, before launching  
16 into superfund, take full advantage of whatever  
17 authority we have today under the Atomic Energy Act,  
18 because it's broader than I think I had understood it,  
19 and I think it provides authorities that may come  
20 closer to what you're talking about under superfund.

21 And then secondly, as the Chairman has  
22 suggested, I'd like to see the concrete site if and  
23 when you get to that point. It may be that we'll have  
24 a licensee in every case or someone who's financially  
25 willing to do the job in a manner that covers all the

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1 risks at the site.

2 MR. TAYLOR: That's the ideal.

3 COMMISSIONER CURTISS: Yes.

4 CHAIRMAN CARR: Well, in our 22 August  
5 letter, in the last paragraph, we ask you to describe  
6 how the strategy was going to be implemented for each  
7 of the contaminated sites, including the ones in 88-  
8 308 and 89-224. So what I expected you to do was come  
9 in and say site X is going to end up -- we're going to  
10 go this way with an order. We're going to make this  
11 guy go. And finally, we get down here to site Y, who  
12 says, "We can't find the guy that owns this," and the  
13 only option we've got is to go superfund. I thought  
14 that's what we were going to be at, but we're  
15 obviously not there yet.

16 MR. TAYLOR: We're not there yet. I think  
17 that progression will be part of this project.

18 COMMISSIONER CURTISS: No need to cross the  
19 superfund bridge until we get to it, I guess.

20 MR. BERNERO: Yes, but at the same time,  
21 from that one can derive at this time, I would guess,  
22 a fairly comprehensive matrix of combinations of real  
23 sites where ranging from there is a responsible party,  
24 the party has the money and the party is willing to do  
25 it, to the other extreme, there is nobody and there is

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1 no money and no one's willing to do it.

2 COMMISSIONER CURTISS: I think you can  
3 hypothesize those. I agree.

4 MR. BERNERO: No. I think we've got some  
5 real examples.

6 COMMISSIONER CURTISS: Well, if you've got a  
7 case where you've got a licensee --

8 CHAIRMAN CARR: Like 39 real examples.

9 COMMISSIONER CURTISS: If you've got a case  
10 where you've got a licensee that won't pay up, or no  
11 licensee at all, or there aren't authorities available  
12 in exercising what the General Counsel says we can do,  
13 I guess I'd like to have a better feel of exactly  
14 which sites and what the rationale is before going  
15 over to EPA and saying, "Would you list this site on  
16 the NPL?"

17 MR. TAYLOR: I think your instructions are  
18 clear about thinking the superfund through. I  
19 understand, and we will do it that way.

20 Bob, is there --

21 MR. BERNERO: No, no. That --

22 MR. TAYLOR: Does that conclude --

23 MR. BERNERO: Yes. I figured we would end  
24 on the superfund issue. I would repeat that -- I  
25 think I alluded to it before -- we're dealing with

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1 material licensees, and in many cases these are  
2 licensees by agreement states. We have a system  
3 whereby we can maintain a parallelism in the program.  
4 In some cases, we will look at an old docket that is  
5 now an agreement state docket perhaps, or some such  
6 thing. And we need to have the coordination with the  
7 agreement states so that we have a systematic coverage  
8 and they have a parallel coverage, and there could be  
9 parallel actions.

10 The new decommissioning rules are a matter  
11 of compatibility with the states and I don't foresee  
12 any, what shall I say, opposition or recalcitrance on  
13 the part of the states. But this will certainly be  
14 a continuing --

15 CHAIRMAN CARR: I would assume they'd  
16 welcome it with open arms.

17 MR. BERNERO: Yes. Yes. And I would just  
18 assume that it's going to be a need for systematic  
19 coordination with them and we're prepared to do that.

20 CHAIRMAN CARR: I don't see any problem with that.

21 MR. BERNERO: That's it. That concludes the  
22 briefing.

23 MR. TAYLOR: That concludes the briefing,  
24 sir.

25 CHAIRMAN CARR: Questions. Commissioner

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1 Remick?

2 COMMISSIONER REMICK: I've got a question.  
3 I am pleased to see that the staff is addressing these  
4 questions of decommissioning old facilities and the  
5 questions of what are reasonable amounts of residual  
6 activity and timeliness. I applaud your effort and  
7 urge you to continue along that because I think it's  
8 long overdue.

9 CHAIRMAN CARR: Commissioner Roberts?

10 Commissioner Rogers?

11 COMMISSIONER ROGERS: Yes. I may have asked  
12 this before when we talked about some of these things.  
13 What do you think is the potential for other Westlakes  
14 to exist out there that we haven't discovered yet?

15 MR. BERNERO: The fact that we learned of  
16 that one by an allegation, we didn't find that.  
17 Somebody brought our attention to it. I really don't  
18 have a feel for how likely we are to find anymore.  
19 One suspects that there are others, but it would be  
20 impossible to -- at least I can't conceive of a  
21 reasonable survey that could discover anymore. It's  
22 just being open to such allegation and following up on  
23 it vigorously, as was done in that case. We were  
24 able, by survey and deduction, to identify a  
25 responsible party and we think we have a responsible

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1 party connected and being responsive.

2 COMMISSIONER ROGERS: One just wonders about  
3 over the years the little things that have taken place  
4 that nobody knew anything about in the dark of the  
5 night and so on and so forth.

6 MR. TAYLOR: Yes. We're talking of decades  
7 of activity.

8 COMMISSIONER ROGERS: Yes, absolutely. And  
9 whether there's any way to discover potentially  
10 dangerous ones that are out there that somehow we  
11 don't know about. Either through -- I'm just talking  
12 off the top of my head. I haven't thought about  
13 this, but either through inviting allegations or some  
14 technical means of surveying, flyovers or something.

15 MR. TAYLOR: This backward look may indeed  
16 come up with some of that.

17 MR. CUNNINGHAM: I think we can address that  
18 at least in part when we do our resurvey of these  
19 sites from 1965 to 1981 because part of the question  
20 of when you look at the old dockets is what happened  
21 to the waste material. We can organize this in a way  
22 that that is looked at specifically. In other words,  
23 if a licensee logically would have a lot of waste on  
24 its hands at the time the license ended and there  
25 isn't specific information as to where it went, we

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1 might check that further. That will help. It won't  
2 give us 100 percent assurance, but it will help.

3 COMMISSIONER ROGERS: Well, something like  
4 that. You know, it's just a matter of time.

5 CHAIRMAN CARR: We don't have any  
6 indications of any trucking firm that's kind of taking  
7 the shortcut to get rid of it rather than taking it  
8 where it's going, like they do in a lot of cases.

9 MR. BERNERO: Well, I'm still not sure what  
10 happened in Westlake. You see, the search of the  
11 record there indicated that the waste went to a  
12 landfill and was buried deeply in a landfill and it  
13 was written off on that basis and it was only later,  
14 by allegation, we said, "No, it never went there at  
15 all. The trucking company brought it over to Westlake  
16 and dumped it on the surface or near the surface," and  
17 that's how it was found and that's how it was traced  
18 to --

19 CHAIRMAN CARR: It might be worth looking at  
20 that trucking company's records, "Who did you work for  
21 and how long?"

22 COMMISSIONER ROGERS: Well, it's just --

23 CHAIRMAN CARR: But there are other areas.  
24 There's chemical waste disposal and stuff like that.  
25 They've poured it down a few storm drains and --

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1 MR. CUNNINGHAM: These things certainly --

2 COMMISSIONER ROGERS: Put it off on the side  
3 of the road at midnight.

4 MR. CUNNINGHAM: These things certainly  
5 happen. We hope we find them. Now, when we do have  
6 our BRC policy and start issuing regulations under  
7 those policies for use of landfills for certain low  
8 level waste, we're going to have to put increased  
9 attention on that matter because then there's a lot  
10 more potential for waste that really don't meet the  
11 criteria getting into these channels also. So, the  
12 problem will remain with us and will require increased  
13 attention.

14 COMMISSIONER ROGERS: Just one other point  
15 and that is on this timeliness issue. I think that  
16 it's probably -- I don't have too much trouble with  
17 setting some kind of an arbitrary time that these  
18 things ought to be cleaned up by. But then there  
19 ought to be some way that a licensee could  
20 demonstrate, if they chose to do so, an alternative  
21 approach that might go on well beyond that if they can  
22 demonstrate safety. I mean, after all, safety is the  
23 concern. Timeliness or no timeliness is just a way to  
24 get there.

25 CHAIRMAN CARR: But the onus ought to be on

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1 him to make his case.

2 MR. TAYLOR: To make his story.

3 COMMISSIONER ROGERS: But there ought to be  
4 provision for a mechanism to allow that.

5 CHAIRMAN CARR: Get them to put up or clean  
6 up.

7 MR. BERNERO: It doesn't ring true.

8 CHAIRMAN CARR: Waste busters, right?

9 MR. BERNERO: I'll get you one of the white  
10 hats.

11 COMMISSIONER ROGERS: Well, I just -- you  
12 know, I can imagine situations in which it could be  
13 demonstrated without any doubt that it's totally safe.

14 MR. TAYLOR: Yes, sir.

15 MR. BERNERO: We could envision criteria  
16 that would recognize substantial savings of  
17 occupational exposure as a valid justification, but  
18 not economic convenience as perhaps -- the idea of two  
19 licensed activities on the same site that are not co-  
20 mingled in such a way as to involve occupational  
21 exposure and long half life materials, a timely  
22 decontamination of the --

23 COMMISSIONER ROGERS: Well, I'm not sure I  
24 quite go with you on that. You know, as long as the  
25 licensee can demonstrate through any mechanism that

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1 satisfies us that it's safe, then we have to be sure  
2 that that's valid. But if we are, I think that if  
3 they want to do it for economic reasons, I don't see  
4 why we decide that that's immoral or something.

5 CHAIRMAN CARR: No, but when CE moves its  
6 operation to Emitites, how long should we give him to  
7 clean up the one he left in Connecticut?

8 COMMISSIONER ROGERS: Oh, yes. Well, that  
9 may be --

10 CHAIRMAN CARR: It's unreasonable to just  
11 leave him along.

12 MR. BERNERO: We haven't thought it through  
13 sufficiently to lay it on the table and we need to lay  
14 that out so that you can look at that policy and say,  
15 "Is that a sound one or not?"

16 COMMISSIONER ROGERS: Yes. I wouldn't say  
17 that if they can demonstrate to our satisfaction that  
18 the situation is safe and will be maintained safely  
19 until some date at which they can say that they intend  
20 to clean it up, I don't see that an economic issue  
21 there is irrelevant. I think that it -- I don't see  
22 why it has to come in one way or the other. Safety  
23 should be the important consideration, public safety.

24 CHAIRMAN CARR: Commissioner Curtiss?

25 COMMISSIONER CURTISS: I just actually have

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1 a couple of comments and one request. Generally I  
2 think the staff has done a good job here of bringing a  
3 disciplined approach to this situation. We came upon  
4 it and I think the suggestion to come up with sort of  
5 a disciplined framework about how you're going to  
6 approach these sites has been met by the staff here  
7 subject to a couple of comments that I had earlier and  
8 it does seem to me now that we've got kind of a game  
9 plan emerging here and I think that's a good idea.

10 I would -- in fact, I strongly endorse your  
11 proposal to get on with establishing the residual  
12 contamination requirements. I realize BRC is part of  
13 that and that's in our court. But it does seem to me  
14 that that's an effort well worth pursuing and pursuing  
15 in a prompt way.

16 On the question of what to say about -- once  
17 we assess compliance by the licensees with the  
18 Commission's requirements, what to say about the  
19 remaining obligation to meet the forthcoming EPA  
20 standard, I guess that's one I'd like to reserve  
21 judgment on because I'm not comfortable with the  
22 approach of simply saying, as you seem to suggest  
23 here, that. "You've complied with the Commission's  
24 requirements but we're serving notice that there may  
25 be some requirements coming down the pike at some

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1 future date from EPA that you'll have to comply with  
2 too," and our response is contingent upon future  
3 compliance there.

4 Perhaps it would be worth -- at least  
5 personally for me it would be worthwhile to -- when we  
6 get to that point, after we've got the criteria  
7 established by the Commission, the residual  
8 contamination criteria, and when we get to the stage  
9 of perhaps the first one, I guess I'd like to see, in  
10 addition to that option, what other options we have to  
11 address that problem. One approach would simply be to  
12 say, "Check in with us again when the EPA standards  
13 are promulgated."

14 At the other end of the spectrum, and I say  
15 this with all seriousness, if we think we've got the  
16 appropriate standards in place to protect the public  
17 health and safety and there's no need for additional  
18 regulatory requirements and simply waiting for those  
19 leads to regulatory uncertainty, I think we ought to  
20 take it on ourselves to encourage EPA or, if it's a  
21 statutory problem, the Congress to put this issue to  
22 bed and perhaps cut that Gordian knot. We've waited for  
23 the standards now for some time and it's a problem;  
24 as I say, we faced in other areas and I'd like to see  
25 the range of options explored there for how we might

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1 handle that problem so that we don't leave the  
2 licensees hanging in perpetuity with the Commission,  
3 in turn, having all these pending applications or  
4 licenses that we'd have to track with the commitment  
5 of resources on both sides that that entails. I'd  
6 like to see those options explored.

7 And then one final request, if you could.  
8 If you could at some point just send up a list of the  
9 additional five sites that you've identified as you go  
10 through this process. And maybe as you go through it,  
11 if you get a bundle of them, ship them up and let us  
12 know what you're coming up with, what kind of sites  
13 they are and what kind of problems they pose so that  
14 we can get a better feel for it.

15 MR. BERNERO: It would be my intention that  
16 in responding to the Chairman's request for the top  
17 ten, I think it was, priority, that we would give you  
18 a full display just for your information.

19 CHAIRMAN CARR: You're going to have trouble  
20 picking out the top ten if you don't do all of them  
21 anyway.

22 MR. BERNERO: Yes, exactly. There is a  
23 point I would like to raise here and ask the  
24 Commission for advice on this issue you were just  
25 discussing about termination clauses, reserving the

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1 right to come back in for more stringent criteria.

2 CHAIRMAN CARR: I think -- according to the  
3 General Counsel, we have that right whether we put it  
4 in there or not.

5 MR. BERNERO: Well, we are -- as we stand  
6 now, I consider us under a commitment to work with  
7 General Counsel for the language so that there would  
8 be a standard clause to that effect in any license  
9 termination. On the other side of the ledger, in this  
10 activity of cataloguing and prioritizing sites, the  
11 staff is working with the pragmatic criterion of  
12 getting sites off the list if it looks like you can  
13 resolve the issue quickly and cleanly.

14 And we have a number of sites where we think  
15 all we need is the close out survey, a good close out  
16 survey and we'll be able to close out the site because  
17 we will have measured against our criteria, our  
18 present criteria and said, "That's good enough.  
19 That's clean enough." But that's where I would, as I  
20 perceive it, to be now obligated to have this sort of  
21 termination clause reserving the right to reopen. Be  
22 committed to that.

23 CHAIRMAN CARR: Let me ask you there. Our  
24 present criteria, you mean how we got in this mess  
25 already?

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1 MR. BERNERO: No, no, cleanup criteria. Is  
2 that site clean enough?

3 CHAIRMAN CARR: That's what I'm talking  
4 about, the ones we've terminated that got us in this  
5 fix. We did it under our present criteria and it came  
6 back to haunt us.

7 MR. BERNERO: No. No. No. These are sites  
8 that --

9 CHAIRMAN CARR: We've terminated some,  
10 right?

11 MR. BERNERO: Yes. And these are sites that  
12 would meet our interim criteria as -- you know, that  
13 we're talking about coming out of BRC policy and so  
14 forth.

15 CHAIRMAN CARR: Oh, that's not our current  
16 criteria, our current intended criteria.

17 MR. BERNERO: In some cases, they won't be  
18 significantly different. But a site that is clean  
19 enough to close, a survey done September 1990 or  
20 thereabouts, so that we have our own interim and  
21 reasonably robust criteria and we have the ability to  
22 make a finding, this is safe enough for unrestricted  
23 release, poses no undue risk to the health and safety  
24 of the public, to walk away from it and release the  
25 site, it's in that site release, and there are several

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1 in that list of 39 that would fit this bill, that  
2 right now I feel compelled to include a clause with  
3 those ominous words.

4 COMMISSIONER CURTISS: Well, let me comment  
5 on that because that's the --

6 CHAIRMAN CARR: That was my promise to  
7 Synar.

8 MR. BERNERO: Yes.

9 COMMISSIONER CURTISS: I think if you in  
10 fact have reached that point where you can say that  
11 the Commission feels that the site has been cleaned up  
12 in a manner that poses no risk or meets those  
13 statutory requirements there, before we go around  
14 saying in all the licenses that we're going to subject  
15 the licensees to the application of standards which,  
16 A, we haven't seen yet, B, we don't know when they'll  
17 come out, and C, I take it we don't know what impact  
18 the standards will have on cleanup actions that have  
19 already been taken, and therefore the cost -- I guess  
20 I'd just like to see the options arrayed in more of  
21 the pros and cons for how we might approach that  
22 beyond simply saying, "Stay tuned for future federal  
23 regulatory requirements."

24 I realize now we're in that legal bind, but  
25 it's a legal bind that I think the Chairman has

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1 appropriately said we don't have any legal option at  
2 this point but that doesn't seem to me to foreclose  
3 options such as trying to encourage EPA at that point  
4 to be satisfied with what the Commission has done in  
5 its standards or if it's a legislative or  
6 administrative problem, to seek relief beyond just the  
7 administrative discussions.

8 MR. BERNERO: Okay. We'll bring it to your  
9 attention. I have -- this is the list of 39 right  
10 here. And in category number one, sites being  
11 decontaminated right now, there are at least two that  
12 leap to my mind that are -- one is a survey, the other  
13 is a cleanup followed by a survey that would be ripe,  
14 I think, in 1990 certainly. We'll have to come to  
15 you --

16 MR. MALSCH: Yes. I see two separate issues  
17 here. One would be if we are considering closing out  
18 a site and we ourselves have not even developed final  
19 decontamination criteria. But then the second  
20 question is once we've developed our own final  
21 decontamination criteria, whether we would want to  
22 continue to have any such clause in a closeout --

23 COMMISSIONER CURTISS: If it's a question of  
24 NRC criteria --

25 MR. MALSCH: I see that as two separate

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1 questions.

2 COMMISSIONER CURTISS: If it's a question of  
3 NRC criteria, I'd be inclined to say that we can't  
4 sign off before our criteria are final and I guess I  
5 would say that whatever needs to be done to ensure  
6 that the interim stabilization is done, can be  
7 completed in a manner consistent with the Commission's  
8 to be developed criterias, one matter.

9 MR. MALSCH: Right.

10 COMMISSIONER CURTISS: The thing that  
11 concerns me more than that though is the prospect that  
12 the status of those facilities or licenses will be  
13 left hanging for some indefinite period of time for  
14 the EPA standard and for some indeterminate cleanup  
15 action that who knows today what it's going to entail  
16 because we haven't seen the EPA standard.

17 MR. MALSCH: And in particular for the  
18 second class, you would want to be concerned or at  
19 least think seriously about whether you would be, by  
20 including a condition in a license termination clause  
21 like this, subject the licensee to standards that  
22 would not otherwise apply without the clause.

23 COMMISSIONER ROGERS: That's the issue of it  
24 in my mind. It's a very serious one.

25 MR. BERNERO: I believe then the policy of

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1 such a clause, whatever we call the termination  
2 clause, needs to be ventilated with the Commission on  
3 the first case.

4 CHAIRMAN CARR: Oh, I would say if you're  
5 going to terminate anybody in the next year, please  
6 send it up.

7 MR. BERNERO: Yes. Yes. I agree.

8 COMMISSIONER CURTISS: I think that will be  
9 an opportunity for us to take a look at this question.

10 MR. BERNERO: Without a doubt.

11 CHAIRMAN CARR: Anything else?

12 COMMISSIONER REMICK: Mr. Chairman, just a  
13 follow-up, I think, on Commissioner Rogers' question  
14 on whether we know of all the sites. Have you thought  
15 about contacting state radiological health offices to  
16 see if they have suggestions that we might not have  
17 thought of that they are aware of?

18 MR. MILLER: I could answer that. We have  
19 been surveying the individual agreement states and we  
20 have a list here today. In that list of sites, they  
21 don't all meet the pure definition that Bob has  
22 described here today, but we've heard from 22 states.  
23 They have listed 61 sites. Now, what we have to do is  
24 to gather additional data. We have some data on each  
25 of them. It's kind of skimpy, but we probably will be

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1 able to go back for additional information.

2 COMMISSIONER REMICK: But even in states  
3 that are not agreement states, they might be aware of  
4 sites that we might not even think of. I happen to be  
5 aware in Pennsylvania where allegations have been  
6 made -- whether they're true or not, I don't know--  
7 about a formerly NRC licensed facility, about waste  
8 being disposed of there. The state radiological  
9 health office explored it. I'm not even aware that it  
10 was ever even elevated to the NRC as a question. But  
11 I was just thinking that there might be cases like  
12 that that they at least could identify potential sites  
13 that they've heard about or had some reason to  
14 suspect --

15 CHAIRMAN CARR: Mr. Synar will tell us about  
16 a few at the next hearing.

17 MR. BERNERO: They always have a new one.

18 CHAIRMAN CARR: That's a good point.

19 Well, I'm not as sanguine as my fellow  
20 Commissioners about the progress we're making. It  
21 seems to me I haven't heard anything today I didn't  
22 hear at the prebrief for the Synar hearing except  
23 we've added a few more sites.

24 I think we've got a bigger problem than  
25 we've highlighted. I think prioritizing this list is

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1 going to be very important. But I'm concerned with  
2 the ultimate goal of cleanup. Are we really going to  
3 release all these sites for unrestricted use someday?  
4 Is that really where we're going or are we going to be  
5 realistic about it and say, "Hey, some of them are  
6 never going to be able to be released for unrestricted  
7 use"? This causes me some problems. What are we  
8 really going to -- what is the ultimate goal of  
9 cleaning these things up?

10 MR. BERNERO: The ultimate goal, the  
11 umbrella policy that the decommissioning rules and  
12 policy embrace is that sites should be decommissioned  
13 for unrestricted release. But we're dealing here with  
14 a lot of --

15 CHAIRMAN CARR: Should we reconsider?  
16 That's what I'm asking. Is that unrealistic?

17 MR. BERNERO: We're dealing here with  
18 grandfather sites, a lot of old things. A prevailing  
19 standard, particularly for the source material sites,  
20 the ones that are -- you know, the natural  
21 radioactivity from refractory ore work or other  
22 similar activities, we have a branch technical  
23 position published in 1981 that evolved by practice.  
24 If you read that position, it is basically a technical  
25 basis to reconcile oneself with the potential for

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1       stabilization in place. That's what we discussed with  
2       Synar and elsewhere.

3               CHAIRMAN CARR: Remember those about --

4               MR. BERNERO: Restricted release.

5               CHAIRMAN CARR: -- about a permanent  
6       restrictions on use of the site forever.

7               MR. BERNERO: Yes. This is --

8               CHAIRMAN CARR: We haven't addressed that  
9       today.

10              MR. BERNERO: No, this is not a desireable  
11      thing.

12              CHAIRMAN CARR: Which of these on this list  
13      fall into that category? There are a number of them  
14      that will comply and we've kind of glossed over that.

15              MR. BERNERO: But, you see, the candidate  
16      sites that are on this list in many instances, like  
17      Westlake Landfill, there's not anything on paper that  
18      I can point to and say, "There's your standard,"  
19      there's even a standard let alone --

20              CHAIRMAN CARR: Well, but you just told me  
21      if we get the BRC or policy out --

22              MR. BERNERO: No.

23              CHAIRMAN CARR: -- that will take care of  
24      the standards.

25              MR. BERNERO: In some cases it will be very

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1 simple and straightforward.

2 CHAIRMAN CARR: I assume that standard is  
3 for unrestricted use.

4 MR. BERNERO: Yes. But there will be cases  
5 where the cost of meeting that standard would be very  
6 high and one is going to consider, but not necessarily  
7 authorize, stabilization in place. That's what we're  
8 involved in in a number of cases already.

9 CHAIRMAN CARR: And that's what I was hoping  
10 we'd find out today. So, what I need to do is-- we've  
11 got to find out which of these sites are so-called  
12 significant contamination, which of them you expect to  
13 get checked off in '90. I need to work with this list  
14 of sites instead of all the philosophy. This is not a  
15 generic problem, it's 39 sites. It may be 41 or 42,  
16 get 12 more or something, but let's fix the sites  
17 instead of trying to worry about the generic issues  
18 and knock off the ones that -- if there's none of  
19 these, which we've said, add a serious threat to  
20 public health and safety, then when we get the  
21 priority list we'll work on the worst ones --

22 MR. BERNERO: Yes. Our first criterion is  
23 safety, but we've got this --

24 CHAIRMAN CARR: But we need to get on with  
25 getting something done. I had a question here on how

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1 much progress have we made in the last year of  
2 cleaning up the sites. Have any of them been released  
3 for unrestricted use since October '88 when you sent  
4 us SECY-88-308?

5 MR. BERNERO: We've had a lot of litigation.

6 CHAIRMAN CARR: Zero.

7 MR. BERNERO: Yes. What we're running into  
8 is litigation

9 CHAIRMAN CARR: You're telling me about two  
10 maybe next year.

11 MR. BERNERO: Oh, I think I've got more than  
12 two that are candidates for next year.

13 CHAIRMAN CARR: And we've picked up a few  
14 more sites, so we're getting behind. But I work  
15 better that way, you know.

16 MR. BERNERO: But a word of caution. The  
17 experience to date where we have moved vigorously, and  
18 there's a limit on how much we can talk about it  
19 because they are cases before the Commission process,  
20 but we go into litigation and it's painful, it's  
21 resource intensive and it's inconclusive.

22 CHAIRMAN CARR: But I know where those are  
23 and I don't know where the rest of them -- I mean, you  
24 know, I --

25 MR. BERNERO: And they're fairly

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1 straightforward ones too.

2 MR. TAYLOR: We'll start working from the  
3 list and down through that. There will be some where  
4 we will stall because of litigation.

5 CHAIRMAN CARR: Well, yes, I -- well --

6 MR. TAYLOR: That way you'll know. That's  
7 what you'd like.

8 CHAIRMAN CARR: Enough on that particular  
9 issue.

10 I guess I have a problem though with the  
11 hangup on timeliness. I don't care what time we pick.  
12 It seems like we ought to just pick a time and say,  
13 "If you can't make it by then, come in and -- I mean  
14 if you don't want to make it by then or there's no  
15 reason," it's going to be arbitrary whatever time we  
16 pick because it's going to be "site specific," and we  
17 make the guy make it site specific by coming in with  
18 his argument rather than having to go out and make our  
19 own decision on each site on what we think is timely.

20 I throw that on the table for you just  
21 because I --

22 COMMISSIONER ROGERS: Well, I like that. I  
23 mean I'm not --

24 CHAIRMAN CARR: We can spend a lot of time  
25 trying to decide what a timely decision is, but in the

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1 end why don't we just say, "Hey, this is an arbitrary  
2 time. Bang. Get it cleaned up in three years after  
3 you've quit using it."

4 MR. BERNERO: "And I don't care if it's  
5 economically convenient not to."

6 CHAIRMAN CARR: Or, "Tell me why you can't."

7 COMMISSIONER ROGERS: But they may --

8 CHAIRMAN CARR: They may make such an  
9 overwhelming case, we'd have to agree with them.

10 COMMISSIONER ROGERS: Make a good case for  
11 not doing it. Yes. But they should have that  
12 opportunity.

13 CHAIRMAN CARR: Thanks for the briefing.

14 MR. BERNERO: You're brimming with faint  
15 praise.

16 CHAIRMAN CARR: No, I suspected we weren't  
17 any further along than this when I had trouble getting  
18 my interim letter to Synar on what kind of progress we  
19 were making. I suspected it wasn't very much or we'd  
20 have been happy. But I don't mind telling him that  
21 and it is a tough problem. I don't want to make out  
22 like it's a simple problem, we ought to go ahead and  
23 get it behind us. We could always say it ain't our  
24 problem, and generate it back there somewhere, but it  
25 is our problem to clean it up.

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1 I would encourage you to proceed  
2 expeditiously. I think there is room for cooperation  
3 with EPA, but I don't think we're at that point yet.  
4 I think when we know what we want to do, when we get  
5 our BRC or our exemption policy in place, I think  
6 we've already got a big leg up. I don't think EPA can  
7 make a case to anybody that four is so much more  
8 important than ten or whatever the numbers are, that  
9 they can win that. I think getting on the street  
10 first will help. At least it's a criteria everybody  
11 else has to shoot at.

12 So, as I say, I think dealing with -- the  
13 matrix of the sites, I think, is going to be critical,  
14 as far as I'm concerned, this site, what needs to be  
15 done, where it is, how serious it is, all that routine  
16 is very important.

17 I think that our capability to put the onus  
18 on somebody from what I read in the General Counsel,  
19 if you can say the site is in trouble, we can find  
20 somebody to finger in most every case. If we can't,  
21 then we've got a particular set back here. We'll have  
22 to work some other way.

23 But it's very important that we close the  
24 door to this action and don't generate anymore of  
25 them. So, when you're getting ready to terminate one

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1 of these licenses, we've got to look, I think, at our  
2 surveys. Evidently, some of our surveys in the past  
3 that we've hired a contractor to do, we've missed  
4 something or else. So, we want to be careful that  
5 we -- and I don't know what kind of criteria we're  
6 going to use, but it seems to me it would be -- in  
7 retrospect, I wish we'd have done 100 percent survey.  
8 Then you are sure when you turn it loose that the  
9 guy's not going to find one. I realize that's not  
10 practical, but the statisticians can tell us with what  
11 probability if you take X number of samples --

12 MR. BERNERO: Well, we can at least have,  
13 and we do have now, I think, a reasonable body of  
14 criteria for the full scope survey a licensee must do  
15 and the audit survey that we would do in addition.

16 CHAIRMAN CARR: Because I'd hate to see any  
17 additions to the list from this point on because we  
18 didn't do our work right.

19 Any other comments? If not, we stand  
20 adjourned. Thank you.

21 (Whereupon, at 3:31 p.m., the above-entitled  
22 matter was adjourned.)  
23  
24  
25

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SITES UNDER NRC JURISDICTION

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: DECEMBER 21, 1989

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STRATEGY FOR CLEANUP OF  
CONTAMINATED MATERIALS SITES

DECEMBER 21, 1989

ROBERT M. BERNERO

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## OUTLINE

- o RELATED MATTERS
- o DECOMMISSIONING STRATEGY
- o REGULATORY DIFFICULTIES
- o MAJOR ACTIONS
- o ISSUES NEEDING FURTHER STUDY
- o CONCLUSIONS AND AGENDA

#### RELATED MATTERS

- 0 SECY-88-308 (OCTOBER 31, 1988)  
IDENTIFIED 31 CONTAMINATED  
SITES
- 0 SECY-89-224 (JULY 27, 1989)  
RECOMMENDED DISCUSSIONS WITH EPA  
ON SUPERFUND
- 0 AUGUST 3, 1989  
SYNAR HEARING RESULTED IN ADDITIONAL  
COMMITMENTS

## OVERVIEW OF STRATEGY

- 0 IDENTIFICATION OF SITES AND  
CHARACTERIZATION OF HAZARDS
- 0 ESTABLISHMENT OF DECOMMISSIONING  
CRITERIA
- 0 ESTABLISHMENT OF DECOMMISSIONING  
PLANS AND SCHEDULES
- 0 IMPLEMENTATION THROUGH ENFORCEMENT  
AUTHORITIES

## REGULATORY DIFFICULTIES

- 0 LACK OF DEFINITIVE RESIDUAL  
RADIOACTIVITY CRITERIA
- 0 LACK OF TIMELINESS REQUIREMENTS
- 0 LACK OF PROCEDURES FOR FORMERLY  
LICENSED SITES



## MAJOR ACTIONS

- 0 NEW DECOMMISSIONING RULE ISSUED IN 1988
  - REQUIRES FUNDING PLANS AND FINANCIAL ASSURANCE - TO BE IMPLEMENTED 1990-1995
- 0 ESTABLISH RESIDUAL RADIOACTIVITY CRITERIA
  - EXEMPTION POLICY STATEMENT - 1989
  - INTERIM RESIDUAL RADIOACTIVITY CRITERIA - JANUARY, 1990
  - RULEMAKING WILL TAKE APPROXIMATELY TWO YEARS

### MAJOR ACTIONS (CONTINUED)

- O INITIATE RULEMAKING TO REQUIRE  
LICENSEES TO MAINTAIN LIST IN ONE  
DOCUMENT OF ALL LOCATIONS OF  
LICENSED ACTIVITIES (SYNAR COMMITMENT)
- O START REVIEW IN 1991 OF LICENSES  
TERMINATED AFTER 1965
- O RULEMAKING ON PROCEDURES FOR ISSUING  
ORDERS TO UNLICENSED PERSONS  
(SECY-89-321, OCTOBER 18, 1989)

### ISSUES NEEDING FURTHER STUDY

- 0 TIMING REQUIREMENTS FOR  
DECONTAMINATION AND DECOMMISSIONING
- 0 REOPENING LICENSES AFTER TERMINATION
- 0 SUPERFUND INTERACTION

### CONCLUSIONS AND AGENDA

- O CONTINUE EFFORT TO DEVELOP  
RESIDUAL RADIOACTIVITY CRITERIA
- O ADDRESS TIMELINESS ISSUE
- O 1991-REVIEW LICENSES TERMINATED  
AFTER 1965

### CONCLUSIONS AND AGENDA (CONTINUED)

- O CONTINUE TO IMPLEMENT CURRENT REGULATIONS, INCLUDING FINANCIAL REQUIREMENTS
- O RESOLVE CURRENT CONTAMINATED SITES
- O RESOLVE SUPERFUND ISSUES

## SUPERFUND ISSUES

- O NEED TO AVOID CONFLICTING DUAL REGULATION
- O NEED TO AGREE ON RESIDUAL RADIOACTIVITY STANDARDS
- O NEED TO ADDRESS NON-RADIOLOGICAL HAZARDS
- O NEED TO INVOLVE SUPERFUND WHEN NRC ACTIONS ARE EXHAUSTED
- O NEED TO AGREE ON NRC/EPA ROLES

BACKUP SLIDE 12