

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: BRIEFING ON STATUS OF NRC'S AGREEMENT STATES
PROGRAM

Location: ROCKVILLE, MARYLAND

Date: JANUARY 10, 1994

Pages: 62 PAGES

SECRETARIAT RECORD COPY

NEAL R. GROSS AND CO., INC.

COURT REPORTERS AND TRANSCRIBERS
1323 Rhode Island Avenue, Northwest
Washington, D.C. 20005
(202) 234-4433

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on January 10, 1994, in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

(202) 234-4433

(202) 232-6600

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - -

BRIEFING ON STATUS OF NRC'S AGREEMENT
STATES PROGRAM

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, January 10, 1994

The Commission met in open session,
pursuant to notice, at 10:30 a.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

MARTIN MALSCH, Deputy General Counsel

JAMES TAYLOR, Executive Director for Operations

ROBERT BERNERO, Director, NMSS

RICHARD BANGART, Director, Office of State Programs

SHELDON SCHWARTZ, Deputy Director, Office of State Programs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

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

10:30 a.m.

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

This morning we are to receive a briefing from the staff on the Agreement State Program and the quite considerable number of changes that have been discussed and considered since the last time we discussed this topic.

The Agreement States Program is a very important program for the Commission. It's been a popular program in the past and, quite frankly, as we look at the future we see interest on a greater number of states, not a fewer number of states. So, it's certainly within the realm of possibility to believe that the vast majority of materials licensees will be licensed through the Agreement States Program and not directly by NRC.

So, the changes that we've discussed in the last year, both in program management and the additional focus that the Commission itself has put on the program, as well as some of the tools, seem to be ever more relevant.

We currently have before the Commission the draft policy statement of compatibility, quite an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 interesting document I must say, which will be
2 discussed in detail on January 24th and which is
3 publicly available.

4 With this draft policy, with the
5 initiatives and integrated material performance
6 indicators, which are among the most widely
7 misunderstood initiatives that the Commission has put
8 forward in the last several years, with early and
9 substantive involvement of agreement states in
10 rulemaking, with the actions taken on specific
11 Agreement States Program, we believe that this program
12 will be strengthened and will be made to be much
13 clearer and much more easily understood and a more
14 effective tool to carry out the intent of the Congress
15 in involving the states as much as possible in the
16 licensing of material management in their own
17 backyards.

18 Commissioners, do you have any opening
19 comments?

20 Mr. Taylor, would you proceed, please?

21 MR. TAYLOR: Good morning.

22 With me at the table are Bob Bernero from
23 NMSS, Dick Bangart and Shelly Schwartz from the Office
24 of State Programs.

25 We're pleased to report to you today, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Dick will elaborate, that we believe that numbers of
2 improvements have been initiated in our own program
3 and, frankly, working with the Agreement States we
4 believe improvements are occurring and strengthened
5 programs are being seen in the agreement states. We
6 do believe additional work is needed and, Mr.
7 Chairman, you mentioned some of the key matters of
8 information that we've been providing to the
9 Commission, including of course the Common Performance
10 Indicators Program and the issues of compatibility
11 which we will brief separately later this month.

12 The first step to tell you where we are
13 and what has been happening, Dick Bangart, the head of
14 the Office of State Programs, will give you a status
15 report of work with the states and other issues
16 related to the way we at NRC conduct that program.

17 Dick?

18 CHAIRMAN SELIN: Good morning.

19 MR. BANGART: Thank you. Good morning,
20 Mr. Chairman, Commissioners.

21 The slides that we'll be discussing this
22 morning have been shared with the agreement states.
23 We have received a few comments late last week on the
24 slides and I'll be incorporating into my presentation
25 those updates and comments that we've received from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 the Agreement States.

2 We've also established a telephone bridge
3 and nearly all of the agreement states and regional
4 state agreements officers and the regional state
5 liaison officers will be monitoring the briefing this
6 morning.

7 (Slide) I'd like to begin with slide 2.

8 That slide lists the areas that we'll be
9 discussing in the briefing. Most of the briefing will
10 address the status of individual agreement state
11 programs in terms of the adequacy and compatibility
12 findings that result from the program reviews. After
13 that we'll then quickly touch on the status of NRC
14 initiatives that you mentioned at least in part.
15 We'll also cover some comments that we received from
16 the agreement states on those initiatives and finally
17 we'll touch very briefly on upcoming meetings that
18 we'll be having with the agreement states to discuss
19 various issues.

20 (Slide) Slide 3 provides the collective
21 distribution of agreement state program findings. The
22 distribution is based on findings that have been
23 formally transmitted in correspondence to the
24 agreement states. As a reminder, let me point out
25 that when an adequacy finding is withheld, the finding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 of compatibility is automatically withheld also.
2 Compatibility alone is withheld when an agreement
3 state has not promulgated a rule within the three year
4 time frame that NRC regulation has gone forward to
5 address and is also needed for compatibility.

6 Since the program reviews are conducted on
7 a biennial basis, the distribution as reflected on
8 this slide may reflect program statuses that are as
9 much as two years old. We invite you to focus on the
10 last category where the findings of both adequacy and
11 compatibility are withheld. The briefing this morning
12 will focus on those states that are listed in that
13 category.

14 (Slide) Slide 4 shows how the
15 distribution would change if we factored in the
16 results of additional program reviews that have been
17 completed, but where we have not yet issued a report.
18 You'll note that Iowa and New Hampshire are no longer
19 in the category where both adequacy and compatibility
20 are withheld. Iowa will move to the adequate and
21 compatible category and New Hampshire will move to the
22 adequate but withholding compatibility category.

23 The list also -- the new list also lists
24 Louisiana as an addition. Previously Louisiana was in
25 the category of being both adequate and compatible.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 The Maryland review has been started, but
2 it's not yet completed. We know now that
3 compatibility will continue to be withheld, but
4 adequacy cannot be determined until we complete some
5 additional program review work.

6 Next I'll go into a discussion about each
7 of the states for which both adequacy and
8 compatibility either is being or will be withheld.

9 COMMISSIONER ROGERS: Just before you do
10 that, Dick --

11 MR. BANGART: Surely.

12 COMMISSIONER ROGERS: -- I wonder if you
13 could comment on whether there's any apparent trend
14 here. It wasn't clear to me how to interpret these
15 numbers, whether we were anticipating an improvement,
16 essentially the same, or a little decline from a
17 national perspective of our finding.

18 MR. BANGART: Oh, they're not clearly
19 reflected in these statistics. I think as you hear
20 the discussions about the individual states that you
21 will see that the trend, I think, is in a positive
22 direction. I should also point out that the
23 population base that is reflected in these statistics
24 may not be remaining constant. In fact, probably
25 isn't remaining constant over time. We are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 approaching reviews already somewhat differently.
2 We're taking vertical slices, looking in-depth at some
3 selected program areas at a frequency, I think, that's
4 greater than in the past. We're also making some
5 compatibility calls that are different from the way
6 they've been made in the past, whereas earlier where
7 we knew a state had an action in place, where a rule
8 would be in place within the next few weeks, few
9 months, we would go ahead and grant compatibility.
10 Now, upon advice of legal counsel, we're saying that
11 they need to have the rule actually in place before
12 we'll make the compatibility finding.

13 So, there are some changes and it's
14 difficult to compare these statistical numbers because
15 of that.

16 COMMISSIONER ROGERS: At some point I'd
17 like to just hear a little bit about this automatic
18 coupling of compatibility and adequacy because I'm a
19 little puzzled by it frankly. I envision situations
20 where you could have a compatible program, but poorly
21 implemented and therefore you would not find it
22 adequate. The automatic coupling of those two
23 together -- and the other way around also. If you
24 think about it a little bit, you might find that it
25 could even have an incompatible program, but it really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 was adequate because there were some temporary
2 measures that have been introduced that were -- so
3 that there was protection of public health and safety,
4 but technically it was not entirely compatible because
5 of some issues.

6 So, I'm just a little puzzled at the
7 automatic coupling of compatibility and adequacy
8 findings.

9 MR. BANGART: We might as well address
10 that now, if it's okay.

11 COMMISSIONER ROGERS: Sure.

12 MR. BANGART: That's been a historical
13 practice of the office and I'm not well versed in the
14 history of that approach. Maybe I'll ask Shelly if he
15 can offer a few words there.

16 MR. SCHWARTZ: I think it was a policy
17 decision at the staff level, I guess you'd put it that
18 way, where it just seems inconsistent to have a
19 program that was not adequate for protecting the
20 public health and safety and still be compatible,
21 still having the regulations in place. If not
22 implemented properly, then we withheld the total
23 program finding of adequacy and compatibility.

24 COMMISSIONER ROGERS: Well, I can see
25 raising a question about the total program, but if all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 of the requirements are entirely compatible with our
2 requirements, but the staffing is inadequate, they
3 haven't been carrying out their inspections and so on
4 and so forth, then one is concerned that public health
5 and safety is not being adequately protected, even
6 under a nominally compatible program. So, to me, one
7 could draw a distinction between those two and it
8 might even be useful to do it. But I see we haven't,
9 that we've automatically coupled it.

10 MR. BANGART: This is an issue that we'll
11 be addressing as we go forward with the use of the
12 common performance indicators in the new initiative
13 that we're undertaking.

14 COMMISSIONER REMICK: Dick, before
15 proceeding, first let me say I hope that camera
16 catches that very classy tie there.

17 MR. BANGART: My wife's selection, I must
18 say.

19 COMMISSIONER REMICK: But I'll follow-up
20 on the new procedure where you don't grant
21 compatibility until regulations are in place. What
22 happens, let's say, if six months later the regulation
23 is in place, it's not time for one of your biennial
24 review. Can they provide you with information which
25 you could then grant compatibility or is that done

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 only after the biennial evaluation?

2 MR. BANGART: The current practice, I'll
3 call it, is that in between the biennial reviews we
4 always have the in between year visit, which is more
5 informal and we just kind of check on how the states
6 proceeding with items that have been identified and
7 meet new people, see if there are any new issues that
8 surfaced.

9 There's a more formal in between step
10 where we do what's called a follow-up review. That
11 kind of follow-up review is usually followed by a
12 letter that will then update the findings from the
13 review. If that follow-up review actually does take
14 place, we will then make the finding in the in between
15 year.

16 (Slide) I'll now move to California,
17 which is shown on slide 5.

18 The major issue surfacing from the program
19 review one year ago was the loss of staff and the
20 difficulty that California had in hiring new staff.
21 That program resulted in the backlog of inspections
22 that was also a concern. We also found an
23 inconsistent application of guidance for handling
24 candidate escalated enforcement cases, but California
25 has clearly disagreed with that finding and we do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 expect to achieve resolution on that disagreement very
2 shortly.

3 Compatibility was withheld not only
4 because of the adequacy of withholding, but also
5 because of one overdue regulation, the rule requiring
6 financial assurances for decommissioning.

7 During 1993 we've continued to interact
8 with California. Region V has had two meetings with
9 state officials to discuss the review findings and to
10 go over the progress that the state has been making in
11 addressing those findings. We'll be formally
12 assessing their progress in a follow-up review that I
13 just mentioned that is scheduled for this month.

14 California is a state that has not yet
15 adopted the new Part 20, but they are going to be
16 requiring their licensees to satisfy new Part 20
17 requirements and they have put in place license
18 amendments for all 2,000 plus licensees that will
19 require them to meet new Part 20, even though they
20 don't have the rule yet adopted.

21 COMMISSIONER de PLANQUE: Before you go on
22 to the next one, when you have a state in this
23 situation of withholding the finding of adequacy and
24 compatibility, do we, NRC, provide support? If so,
25 how much and over what time period?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. BANGART: Yes, that's, I think, an
2 integral part of the Agreement State Program, is
3 providing assistance to states. In some cases we will
4 offer assistance. In other cases, we'll react to
5 requests from an agreement state. It may not be just
6 the regional person or personnel from our staff that
7 will provide that assistance. It also comes in the
8 form of support from the Office of Nuclear Material
9 Safety and Safeguards as well.

10 In this case, I believe that the two
11 meetings that were held could perhaps fairly be
12 described as assistance in that the review findings
13 were discussed in more detail. It's more of an ad hoc
14 approach than a structured systematic one.

15 COMMISSIONER de PLANQUE: Okay. And just
16 back on the enforcement issue, is that resolved or
17 not, the enforcement differences? What was the
18 problem there?

19 MR. BANGART: There apparently are one or
20 more pieces of guidance that address how to handle
21 cases that are candidates for escalated enforcement.
22 It wasn't clear to us that they were consistently
23 being applied by the California staff.

24 COMMISSIONER de PLANQUE: Their own
25 guidance?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. BANGART: Yes. Yes. Right.

2 COMMISSIONER de PLANQUE: Okay.

3 MR. BANGART: And as I understand it, as
4 I indicated, there's not full agreement on that
5 finding.

6 COMMISSIONER de PLANQUE: Okay.

7 COMMISSIONER ROGERS: Dick, I realize that
8 our evaluations presumably are on the states handling
9 of Atomic Energy Act materials, but when you make
10 findings of inadequacy in the Atomic Energy Act
11 materials, is it safe to assume that presumably the
12 NORM/NARM and x-rays and those other type of things
13 are also inadequate? Is that a relatively safe
14 assumption or can't one tell?

15 MR. BANGART: Most often, just to correct
16 the record, our findings are for withholding of
17 adequacy because --

18 COMMISSIONER REMICK: Excuse me. Yes,
19 you're right.

20 MR. BANGART: -- an actual inadequacy
21 finding would mean we'd have to take action.

22 COMMISSIONER REMICK: Thank you for the
23 correction. I agree.

24 MR. BANGART: This is a very good issue
25 because the states often say they have much broader

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 responsibilities than just the regulation of Atomic
2 Energy Act materials. In fact, sometimes they are
3 forced to make trade-offs where there are higher
4 priority, higher health and safety payoffs by focusing
5 their resources in NARM areas or x-ray areas. Our
6 program doesn't really take that into account.

7 But, to answer your question directly, a
8 withholding of adequacy for AEA materials does not
9 necessarily mean that there are similar problems in x-
10 ray or regulation of NORM.

11 COMMISSIONER REMICK: We just would not
12 necessarily know, is that it?

13 MR. BANGART: That's correct. There may
14 be some. If staffing is broader than just AEA
15 materials program, then obviously it would have some
16 ripple effects and other responsibilities as well.

17 COMMISSIONER REMICK: Thank you.

18 MR. BANGART: I should point out on the
19 California discussion that as part of the recent
20 program review we did look at their program to
21 regulate low-level waste disposal activities as well.
22 There were no findings that surfaced or concerns that
23 surfaced as a result of that part of the program
24 review.

25 COMMISSIONER ROGERS: Did you look at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 staffing for that very carefully? I was at the Low-
2 Level Waste Conference a month or so ago and heard a
3 presentation from the former director of the low-level
4 waste program in California and he expressed some
5 concern and it sounded to me like there was some basis
6 for that, for very low staffing levels in that low-
7 level waste area, like one technical person at one
8 time. I just wondered if we focused very closely on
9 the staffing questions with respect to that whole
10 area.

11 MR. BANGART: There are some additional
12 comments I could offer in regard to the California
13 program for regulation of low-level waste disposal.
14 In addition the request for technical assistance or
15 the offer of technical assistance that we do make,
16 there also is a continuing interaction more informal,
17 by a telephone, where we keep in touch with states.
18 We've learned through the meetings and through these
19 informal interactions that the program in California
20 to regulate low-level waste disposal indeed has
21 suffered from the situation that exists out there.
22 They have issued the license, as you know, and the
23 plan was that after the license was issued then the
24 program, the regulatory program would be funded by
25 fees that would be generated from disposal. Well,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 obviously there's a delay because of land transfer
2 issues and the facility becoming operational.

3 So, they have indeed suffered some impacts
4 as a result of that change of course in the funding of
5 the program. They have had to, as I understand it,
6 have some people work at least part-time in some other
7 programs and not full-time in low-level waste. They
8 also have suffered because there have been two senior
9 people, supervisors, that have left the program. My
10 understanding is that even more senior management is
11 now filling in to provide program continuity. They
12 have also brought at least one new person on board
13 that has been groomed and did have some turnover
14 experience or time with one of the retiring
15 supervisors before that supervisor retired.

16 But they are, as we understand it, able to
17 support the lawsuit that has been filed by the two
18 parties and they will be able to support the
19 adjudicatory hearing or other form of hearing if one
20 does indeed take place out there.

21 COMMISSIONER ROGERS: Thank you.

22 MR. BANGART: There are less complex
23 issues associated with some of the other states.

24 (Slide) Iowa is on slide 6. The Iowa
25 program was one where there were major concerns

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 present for a couple of years. There were multiple
2 deficiencies in both the organizational management and
3 implementation of the program.

4 (Slide) Current status of Iowa is shown
5 on slide 7. As a result of significant Region III
6 oversight and assistance to the State of Iowa and
7 because of the initiatives by the state to improve
8 their program, Iowa's agreement state program will
9 likely, and I would almost be able to say certainly,
10 be found both adequate and compatible when the report
11 documenting the December program review was actually
12 issued. I should also point out that management from
13 both Region III and the Office of State Programs did
14 participate in that December program review.

15 (Slide) Louisiana is shown on slide 8.
16 The most recent review was conducted last August and
17 it is likely both adequacy and compatibility will be
18 withheld when the report documenting that review is
19 issued in the near future. The adequacy withholding
20 finding is based on concerns associated with their
21 reviews of sealed source and devices and it's also
22 based on a concern about inspection and scheduling,
23 quality assurance, quality control because there was
24 an initial six month inspection for a major Louisiana
25 license that was not conducted.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 (Slide) This missing of the initial
2 inspection for the major licensee is what is meant by
3 the status of inspection program bullet on slide 9.
4 For Louisiana, compatibility with be withheld only
5 because of the adequacy withholding, not because of
6 the overdue emergency planning rule that's shown on
7 this slide. We very recently learned in one of the
8 comments that we received that Louisiana had
9 promulgated their emergency planning rule with an
10 effective date of January 20th.

11 Since the review in August, the staff of
12 the Sealed Source Safety Section in NMSS has continued
13 to provide assistance to the State of Louisiana. In
14 fact, in December they met with their program
15 counterparts in Louisiana to discuss the sealed source
16 and device review process and program.

17 COMMISSIONER de PLANQUE: Before you go
18 on, is this called preliminary finding because the
19 final letter has not gone to them yet?

20 MR. BANGART: Yes, that's correct.

21 COMMISSIONER de PLANQUE: And is there any
22 reason why it's taking so long?

23 MR. BANGART: Only because of all the
24 other work. The new initiatives, the compatibility
25 policy, the common performance indicators has created

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 a rather heavy workload for us, and this being
2 reflected in some of the correspondence and the
3 reports. This is not the only one that is not as
4 timely as we would like it to be.

5 COMMISSIONER de PLANQUE: Okay. And on
6 the bullet that says, "Did not follow NRC guidance,"
7 is that just because of a lack of training or
8 awareness or what was the real problem there?

9 MR. BANGART: I think there is a root
10 cause problem that I'll try to identify. We, a couple
11 of years ago, conducted for all agreement states a
12 workshop on sealed source and device reviews.
13 Unfortunately, Louisiana was not able to attend that
14 training session. Without that training, then their
15 program has proceeded and it's not been as consistent
16 with the kind of guidance, the training that was
17 provided, as most of the other agreement states.

18 Would you like to expand on that?

19 MR. BAGGETT: I'm Steve Baggett.

20 Very basically on that one issue, the
21 state did not have the documentation that we've given
22 to all the states, like the ANSI standards and some
23 regulatory guides that we use to format. Individuals
24 that they have looking at these evaluations did not
25 know these things existed. So, they were provided.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 COMMISSIONER de PLANQUE: Okay. Thank
2 you.

3 MR. BANGART: (Slide) Maine, on slide 10,
4 became an agreement state in April of 1992. Maine was
5 experiencing what I'll call program start-up
6 difficulties at the time of their first program review
7 in April of '93. A finding of adequacy was withheld
8 and with it the automatic withholding of
9 compatibility. The need for another staff member in
10 the main radiation control program was the most
11 important finding and undoubtedly was the root cause
12 of other program deficiencies such as the inspection
13 backlog.

14 I do need to explain further the last two
15 bullets on this page because they may not clearly
16 convey the message that was intended. Management's
17 supervision of staff means that during a period or
18 some brief periods, supervisory review of completed
19 licensing and inspection actions was not performed.
20 The out-of-state travel restriction comment was made
21 because of the difficulties that is sometimes
22 encountered by the State of Maine in providing out-of-
23 state training for their staff. This comment was not
24 meant to imply that the State of Maine's staff was not
25 adequately trained.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 (Slide) The current status of the
2 activities in Maine, as shown on slide 11, you may
3 remember that the report of the April '93 review was
4 issued in July and concurrently with the issuance of
5 the report our concerns were expressed to Governor
6 McKernan of Maine in writing at that time.

7 We have held recently a successful
8 management meeting with Maine. That was conducted in
9 November. Some of the estimated implementation dates
10 for program improvements have slipped by some small
11 periods of time. Maine is working aggressively to
12 address their program needs. We scheduled a follow-up
13 review that will be conducted next month to review
14 their progress.

15 Maine does deserve a few additional
16 comments though that I'd like to give to you. Since
17 the April '93 program review, Maine has steadfastly
18 held the position that NRC's review of their program
19 has been overly negative, that we could have been much
20 more positive in our handling of the findings, that
21 NRC itself contributed to some of the program
22 difficulties that they were experiencing, that
23 problems that were initially described by us as minor
24 were changed to major concerns without our
25 appropriately notifying the state.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 Those differences, I think, still exist,
2 but we've worked through them, I believe at this
3 point, and the prognosis for Maine, I think at this
4 point, is a very healthy one.

5 (Slide) For Maryland, on slide 12, a
6 program review that began in September is still not
7 completed. While we haven't finished the adequacy
8 review, the review of the compatibility of regulations
9 is completed and just as NRC has found since 1986, the
10 finding of compatibility will continue to be withheld
11 when the review is completed and documented.

12 As of today, the Maryland backlog of
13 overdue regulations will grow from seven in 1991 to
14 11. The list of regulations that are overdue is shown
15 on slide 13, but I'll not be discussing that list
16 unless you have questions about it. I'm told that in
17 large part the regulation backlog is the result of the
18 fact that the Maryland staff has had to devote so much
19 effort to the oversight of Neutron Products.

20 Maryland is putting forth a concerted
21 effort to update their regulations and nine of the
22 overdue regulations are being handled as a package
23 that they hope to have in place later this spring.

24 (Slide) I'd like to move to slide 14.

25 For the adequacy review in Maryland, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 chose to conduct an in-depth vertical slice approach
2 in two review areas. One was the state's licensing
3 and inspection program as it applied to Neutron
4 Products, the cobalt-60 source manufacturing and
5 irradiation facility in Dickerson, Maryland. The
6 other area being reviewed in-depth is their sealed
7 source and device registry program.

8 I think as you're aware there are
9 longstanding occupational dose contamination, waste
10 storage and effluent release ALARA concerns associated
11 with Neutron Products and a number of violations that
12 have remained uncorrected by the licensee for a long
13 time are in existence.

14 The resolution of those issues was delayed
15 by a lawsuit that was filed by the State of Maryland
16 against the licensee. The court and the parties have
17 resolved those issues that have been in contention as
18 of last week. It appears that Maryland is able to
19 proceed with their backlog of licensing actions, that
20 the violations have been upheld by the court and that
21 their escalated enforcement is not proceeding.

22 The additional work is also necessary to
23 complete our review of the sealed source and device
24 program, as I indicated. All the information that we
25 need to make an adequacy determination on that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 individual program element was not available last
2 September and the Region I state agreements officer is
3 in the process of scheduling a meeting with the state
4 officials to go over the NPI license and the remaining
5 issues associated with the sealed source and device
6 program.

7 (Slide) Slide 15 shows the remaining
8 issue that we're working on with the State of
9 Maryland. That issue is the misadministration event
10 that occurred at Sacred Heart Hospital in the late
11 1980s. The question of the need for Sacred Heart
12 Hospital follow-up is not directly tied to the program
13 review, however, but there is a remote possibility
14 that a generic Maryland program issue could surface if
15 indeed there is a follow-up that's conducted.

16 (Slide) Next slide, please.

17 For Nebraska, an adequacy finding was
18 withheld as a result of the September 1992 review
19 because of a loss of staff and the impacts resulting
20 from that loss, most notably the overdue inspection
21 backlog.

22 (Slide) As of September 1993, as shown on
23 slide 17, Nebraska has made progress. They have hired
24 new staff and were recruiting others at that time and
25 they have significantly reduced their overdue

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 inspection backlog. So, positive trending also exists
2 in Nebraska.

3 COMMISSIONER de PLANQUE: Before you go
4 on, that reduction in the backlog, was it done by
5 taking the easiest ones just to get the number down or
6 were they prioritized in any way? Do you know?

7 MR. BANGART: Dick Blanton of our staff
8 actually conducted the most recent visit. I'd like to
9 ask him to address that question.

10 MR. BLANTON: As I recall, the inspections
11 were prioritized and there was a concentration on the
12 higher level priorities.

13 COMMISSIONER de PLANQUE: Okay. Thank
14 you.

15 MR. BANGART: (Slide) New Hampshire is
16 shown on slide 18. Again, staffing shortfalls appear
17 to be a major contributing factor to the withholding
18 of adequacy and compatibility findings in 1992.
19 Adequacy and compatibility concerns that have been
20 associated with the program have been in existence
21 since 1982. We completed a follow-up review in July
22 of last year and learned that New Hampshire has hired
23 three new health physicists and that they have
24 completely eliminated their licensing and inspection
25 backlogs. New Hampshire is also working on their two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 overdue rulemakings and expects to complete them
2 together with their issuance of the new Part 20 later
3 this year. Again, this is another state where
4 improvements are noted.

5 (Slide) Tennessee is shown on slides 19
6 and 20. This is a program that has had an apparent
7 dramatic strengthening over the last year or two,
8 after experiencing severe staffing problems at the
9 time of the review in 1991. It now appears likely,
10 based on our June 1993 visit and the recent letter
11 from the Tennessee Commissioner of the Department of
12 Environment and Conservation that the findings that
13 will result from the upcoming program review will be
14 much improved compared to the earlier findings.

15 Tennessee has also adopted all regulations
16 that they need for compatibility, including the new
17 Part 20.

18 COMMISSIONER REMICK: Dick, in almost all
19 these cases, staffing appears to be a problem. That
20 is not necessarily surprising to me because it's a
21 concern I've had about agreement state programs for
22 many years, the ability to acquire and retain people
23 either due to salary or political pressures that can
24 be brought on state employees and so forth in some
25 cases. Is there any specific trend that you see on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 why there's a large turnover or low staffing? Is it
2 related to salaries? Is it related to inadequate
3 funding by the state?

4 MR. BANGART: I think the primary cause is
5 the salary issue. There is another factor present and
6 that is at least in some states where the fees that
7 are generated from licensees do not go directly to the
8 AEA materials regulatory program, they go into the
9 general fund and then there's that interim step of
10 providing funding for the AEA material regulations.

11 But I think it's primarily the salary
12 issue. I looked at a survey of state salaries
13 recently and the data was for 1991. But the lowest
14 starting salary was in the \$15,000.00 range. There
15 was also a column that showed maximum salaries. The
16 lowest maximum salary was in the range of the mid
17 \$30,000.00. So, for those states that do have those
18 particularly low salary rates, it's not surprising
19 that as staff do gain experience that they seek higher
20 pay jobs and move on. But that is, in my view, the
21 fundamental reason for the turnover.

22 COMMISSIONER REMICK: Particularly, I
23 would think, with people like health physicists where
24 there is a large need by other organizations and
25 salaries are much higher.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 MR. BANGART: They can move on to other
2 higher paid state programs. They can move on to NRC
3 or DOE or they can move to industry.

4 COMMISSIONER REMICK: Yes.

5 MR. BANGART: All of which have higher
6 salary structures.

7 (Slide) We're now on slide 21.

8 A common agreement state concern during
9 the last part of calendar year '93 was the question of
10 whether agreement states would get their equivalent of
11 the new Part 20 regulations in place by January 1.
12 Even though the agreement states have been notified of
13 the importance of timely rule adoption as early as
14 last fall or as late as last fall, it appeared that
15 only a handful of agreement states would have their
16 new rules in place. However, due to what must have
17 been Herculean work on the part of some of the states
18 over the last few months, that situation has
19 dramatically improved. Most of the agreement states
20 currently have regulations in place and all of the
21 agreement states are expected now to have the new Part
22 20 regulations in place by midyear.

23 I should comment though that six states
24 either have adopted or expected to adopt their rules
25 using emergency authority to issue immediately

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 effective regulations or almost immediately effective
2 regulations. These emergency rules are effective for
3 periods that range from as short as 120 days to as
4 long as one year with at least a number of states
5 having the authority to extend the emergency
6 rulemaking provision. Any state that used the
7 emergency rulemaking authority will still have a final
8 rulemaking action to take on top of that.

9 We did provide a review and comment of new
10 Part 20 regulations that are being adopted by
11 agreement states. That again was a large task. In
12 many respects you'd have to call that an informal
13 review. But we have established a contract with Oak
14 Ridge National Laboratory. They are going to review
15 all the agreement state regulations, identify the
16 differences, document the differences and the
17 acceptability of those differences and so will end up
18 with what I'll call an electronic Part 20 information
19 database where all the Part 20 regulations, the most
20 basic radiation protection standards can be compared.

21 There is a view that we may be able to
22 learn to something about our own Part 20 as a result
23 of going through that exercise. If there is an
24 across-the-board need in the agreement states to
25 approach one particular area differently, maybe we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 should relook at our regulation as well.

2 COMMISSIONER de PLANQUE: Who is setting
3 the criteria for whether or not the states' rules are
4 compatible in this case?

5 MR. BANGART: One of the starting points
6 is the suggested state regulations of the Conference
7 of Radiation Control program directors that will be
8 used in this comparison as well. With that, with our
9 Part 20 with the background material that goes with
10 the development of our own rule, we have asked the
11 contractor to outline the criteria that they'll be
12 reviewing and making these judgments about. They're
13 not going to be making the judgments, they're going to
14 be giving us information about the differences in
15 whether or not, in accordance with the criteria that
16 they'll be using, whether or not they think there is
17 an acceptable difference or non-acceptable. We'll be
18 making the final judgment about acceptability, of
19 course.

20 COMMISSIONER de PLANQUE: You plan to look
21 at their criteria before they actually go ahead and do
22 the exercise?

23 MR. BANGART: Yes. Yes. Yes.

24 COMMISSIONER REMICK: Dick, earlier in
25 your presentation you mentioned that some states would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 meet the January deadline for Part 20 by amendments,
2 presumably placing conditions on licenses. Where do
3 they fall in this list that you have here?

4 MR. BANGART: They cannot satisfy the
5 compatibility requirement by putting in license
6 conditions. That helps them in achieving or
7 contributing to the national consistency that we're
8 looking towards. But these numbers here only reflect
9 those states that have actually had rules in place or
10 the expectation of when they will have rules in place.
11 There are two states that use license conditions. I
12 mentioned California as one. I believe the other is
13 North Dakota. But North Dakota's regulations will be
14 in place, I think they expect, later this month. So,
15 their license conditions will be needed for only a
16 relatively short period.

17 COMMISSIONER REMICK: And California, does
18 it fall within the by April or by July?

19 MR. BANGART: California is actually a
20 state that will adopt or plans to adopt their new Part
21 20 rule by their emergency rulemaking authority and
22 that will occur in the first quarter of this year.

23 COMMISSIONER REMICK: Thank you.

24 MR. BANGART: (Slide) In addition to
25 everything else we're working on, we're also working

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 with four non-agreement states, as shown on slide 22,
2 that are currently seeking an agreement. Pennsylvania
3 is seeking a limited agreement to regulate low-level
4 waste disposal. You're aware the low-level waste
5 compatibility issues with Pennsylvania have been
6 resolved and we're currently working with Pennsylvania
7 to resolve remaining compatibility issues with other
8 regulations, most notably the new Part 20.

9 We are at earlier stages in working with
10 the other three states shown on the slide. Each of
11 those three states are seeking full agreements.

12 We met with Oklahoma officials in November
13 of '93. We'll be meeting with Ohio, actually,
14 tomorrow. And we're scheduling a meeting with
15 Massachusetts. Probably that will be held in
16 February.

17 COMMISSIONER REMICK: And am I correct
18 that all four will have to be found compatible and
19 adequate before --

20 MR. BANGART: That's correct.

21 COMMISSIONER REMICK: -- they receive --

22 MR. BANGART: Yes.

23 COMMISSIONER REMICK: Well, what is the
24 incentive for a state to want to become an agreement
25 state?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. BANGART: I think two main factors.

2 One is that a number of states, if not all
3 states, believe that they can more effectively
4 regulate the licensees within their state boundaries
5 because they, the state, are aware of the local state
6 issues much more acutely than we at the national level
7 are. And this particularly applies, I think, to the
8 regulation of low-level waste disposal.

9 The other that I think you're aware of is
10 the NRC fee structure for materials licensees. In
11 most cases, if not all cases, states find that their
12 fees will be less than those of the NRC, and that's
13 attractive, obviously.

14 COMMISSIONER REMICK: To the state? Or,
15 are they looking out after the licensees?

16 MR. BANGART: I think clearly the
17 regulated community would like to have lower fees as
18 well. In fairness, I think there is a view by the
19 states that some of our materials licensing fee
20 structure is perhaps on the exorbitant side.

21 COMMISSIONER REMICK: To any extent, is it
22 a fact that states that do have some responsibility
23 for other than Atomic Energy Act materials see this as
24 an opportunity for that particular organization to
25 grow in size if they took on the additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 responsibilities?

2 MR. BANGART: Certainly. I would agree
3 with that, yes.

4 COMMISSIONER REMICK: Because, if it
5 wasn't for the fact they had other radioactive
6 materials, it's hard for me to imagine that
7 necessarily the state would want to take on the
8 additional responsibilities, particularly when they
9 have the NRC with oversight functions and certain
10 requirements.

11 MR. BANGART: I think, with maybe only one
12 exception, all state in some way has those other
13 responsibilities, so they may not be centralized in
14 the same group or not, but they have those
15 responsibilities clearly.

16 COMMISSIONER de PLANQUE: Dick, given the
17 fact that we've seen some problems with recently
18 approved states, are you changing the process at all
19 in determining that the state is ready to go? Are we
20 doing anything differently or plan to do anything
21 differently?

22 MR. BANGART: That's one of the issues
23 that we're addressing in the long list of issues that
24 have been identified to us to be addressed and I'll be
25 covering generically those other issues that we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 addressing in one of the later slides. But, yes, I
2 think clearly, based on experiences that I'm aware of,
3 there will need to be some changes and that we won't
4 accept -- probably won't be as likely to accept
5 promises for completion of some things as we have in
6 the past. We'll want to see that all the elements of
7 a program indeed are in place.

8 (Slide) On slide 23, we get to the major
9 initiatives that NRC is working on that apply at least
10 in part to the Agreement State Program. I'll quickly
11 go through these in the next few slides, but just to
12 speak mainly to status, not to substantive issues.

13 (Slide) Slide 24 addresses the program to
14 establish indicators that will be used to assess the
15 common elements of materials programs that are
16 implemented by both NRC regions and the agreement
17 states. NMSS and state programs have been working
18 very closely on this particular initiative. We've
19 obtained comments in October from both the regions and
20 the agreement states on the draft that was then in
21 existence. We've incorporated that feedback to the
22 extent that we think is appropriate in the Commission
23 paper that is currently on its way to you hopefully in
24 the very near future.

25 We currently expect to implement a pilot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 program that will be beginning in March of this year.
2 We do expect that we will be using this approach to
3 review two regions and a few agreement states and then
4 the feedback from that experience will be used to
5 develop the final program.

6 CHAIRMAN SELIN: Before you get off that,
7 I was dismayed to see the formal comments of the
8 agreement states. They were very negative to this
9 program, which I thought reflected a lack of
10 understanding of the program. And we do evaluations
11 already. It wasn't as if we were going to do a new
12 evaluation.

13 Furthermore, it's clear to me we don't
14 intend to treat agreement states like licensees, but
15 rather to have a more uniform evaluation, more uniform
16 both from state to state and from agreement state to
17 NRC region.

18 Has this opposition to the program
19 continued? Has there been any -- have we changed it
20 or have we communicated more clearly what we're trying
21 to do or are the agreement states still so negative on
22 this program as their stated comments would indicate
23 about six weeks ago?

24 MR. BANGART: I don't think there has been
25 an opportunity for the states to develop a different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 view yet. Hopefully, when they see the Commission
2 paper and the draft management directive that will be
3 enclosed with the Commission paper, I think that I
4 believe there's a basis for them to view the common
5 performance indicator program in a more positive
6 light. I think that we have reflected many of the
7 concerns in the new draft and that they -- the
8 concerns were valid ones, I think, that were voiced,
9 and my hope is that indeed that negative view will not
10 prevail.

11 (Slide) Slide 25. The compatibility
12 policy paper, as you mentioned, is before the
13 Commission for review. The briefing is scheduled on
14 January 24th, and, unless you object, we will be
15 conducting a public workshop that is now tentatively
16 scheduled for February 22nd and 23rd to obtain
17 additional comments from the agreement states, from
18 the public and industry.

19 (Slide) We've also been requested to
20 review a broad range of additional agreement state
21 program areas that are outlined here on slide 26. A
22 multi-office programmatic assessment group has been
23 formed to conduct the review and develop
24 recommendations for your consideration.

25 The first task that we're facing is to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 develop a broad statement of policy. That policy,
2 once developed and approved by the Commission, will
3 provide guidance for the programmatic assessment group
4 to complete the remaining tasks that we've been called
5 on to complete.

6 There has been a lot of coordination in
7 the development of the new compatibility policy and
8 the common performance indicators. There will be
9 continued integration effort by the program assessment
10 group as we complete work on each of these review
11 areas and it will be the PAG, as we call it, that will
12 be tasked with this broader integration effort of all
13 new initiatives that will be coming forth with the
14 agreement state programs.

15 COMMISSIONER ROGERS: What is the extent
16 to which agreement states are contributing to the work
17 of that program? I understand that you had some
18 difficulties with actually having agreement state
19 people as members of that committee or group, but to
20 what extent can you call on agreement state comment as
21 you proceed along in carrying out this integration?

22 MR. BANGART: Currently we'll be using an
23 approach that's been practiced in development of the
24 compatibility policy. As we get to a point where
25 we've developed something that we think is ready for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 peer review, public review, we'll be issuing these
2 what I'll call final drafts to the agreement states
3 for comment so that the Commission will have the
4 benefit of knowing the states' views on the proposals
5 when they come forward for review.

6 We did try some other approaches as well.
7 We invited at the annual agreement states meeting any
8 person from the agreement state community who had an
9 interest in joining the NRC through an
10 intergovernmental personnel agreement to identify
11 themselves and volunteer to come work with us,
12 particularly on this project, but other projects as
13 well. Unfortunately, because of individual
14 circumstances, nobody has expressed an interest in an
15 IPA to come work with us as we go forward on this
16 project. We're still hoping that as we do some
17 follow-up calls that perhaps some interest in an IPA
18 will be expressed.

19 We also have the option that we're in the
20 early stages of thinking about of hiring perhaps some
21 retired agreement state officials on a consultant
22 basis that could provide some first-hand input to this
23 process as well.

24 COMMISSIONER de PLANQUE: You may be
25 getting at this later, but the Federal Advisory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Committee Act restrictions are always brought up as a
2 problem for agreement state participation. It seems
3 to me something has been floating around in connection
4 with EPA looking for some sort of exemption for that
5 very problem. Can you tell us anything about that?
6 Or, has staff thought about that with respect to our
7 situation?

8 MR. BANGART: We have been working with
9 the Office of the General Counsel on that particular
10 issue and I'd like to defer to Marty to summarize our
11 actions.

12 MR. MALSCH: Well, we've given some
13 thought, I don't know how far it's gone, to actually
14 creating and chartering an advisory committee which
15 would include agreement state representatives. Beyond
16 that, we've usually been successful in structuring the
17 process so that FACA wouldn't apply. It only applies
18 if you actually have a committee leading to a
19 consensus, trying to lead to some sort of consensus.
20 But, if you just solicit comments and you have open
21 public meetings, usually you can avoid a FACA problem.
22 But we have considered the possibility of actually
23 having a state advisory committee.

24 COMMISSIONER de PLANQUE: But I still
25 sense that the agreement states feel that this is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 significant barrier. Are they as happy with our
2 solutions to this problem as we seem to be?

3 MR. MALSCH: I think it's still kind of
4 unsettled. I don't think they're entirely satisfied.
5 I don't think we've entirely exhausted all the
6 possible approaches that they'd like.

7 MR. TAYLOR: We think they would like an
8 advisory committee --

9 COMMISSIONER de PLANQUE: Yes.

10 MR. TAYLOR: -- as their general approach.

11 MR. BERNERO: And when you see the
12 performance indicator paper you'll see there's another
13 example.

14 COMMISSIONER de PLANQUE: Exactly.

15 MR. BERNERO: The Results Review Board
16 will have to hold a public meeting and the states
17 would have to content themselves with open comment in
18 a public meeting and not participate in the results
19 review and decisions thereto.

20 MR. BANGART: The states have also
21 suggested that we explore the possibility of a change
22 in legislation as well that would exempt them from the
23 FACA provisions.

24 COMMISSIONER de PLANQUE: That was my
25 original intent. Are you still looking at that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 possibility?

2 MR. BANGART: I'll defer again to OGC.

3 MR. MALSCH: I don't think we've been
4 looking at it seriously. I think it might be
5 considered as a part of, not an NRC initiative, but
6 sort of a government-wide effort. But historically,
7 trying to get legislation dealing with these kinds of
8 open statutes has been very difficult.

9 COMMISSIONER de PLANQUE: Are you aware --
10 what is the status of EPA doing something like this?
11 Do you know?

12 MR. MALSCH: I don't know.

13 COMMISSIONER de PLANQUE: You can come
14 back to us with the answer.

15 MR. MALSCH: I don't know. We'll have to
16 get back to you on that.

17 MR. BANGART: (Slide) Now moving to slide
18 27, the agreement states have long expressed a need to
19 be involved in NRC rulemaking at a very early stage.

20 I think we've got a success story here.
21 The Office of Nuclear Regulatory Research has
22 developed an approach using a preliminary proposed
23 rule that will be available for comment before the
24 actual drafting of a rule. The preliminary proposed
25 rule will identify the need for the rule, identify

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 options available to satisfy the need, and propose a
2 preferred rulemaking approach.

3 Research is also developing an electronic
4 bulletin board that will facilitate the availability
5 of the preliminary proposed rule and the receipt of
6 comment from both agreement states and the public.
7 There was strong support for the preliminary proposed
8 rule approach from the agreement states at the annual
9 meeting in October that was held in Tempe.

10 COMMISSIONER REMICK: What's the
11 difference between a preliminary proposed rule and
12 advanced notice of proposed rulemaking? Is there any
13 difference or is it just another name?

14 MR. BANGART: I'm not an expert on ANPRs
15 and I'm going to have to defer to somebody else to
16 explain the distinctions between the two. We'll get
17 back to you on that. That's an excellent question,
18 obviously.

19 MR. MORRIS: Bill Morris, the Office of
20 Research.

21 The idea that we developed here was to
22 come up with our early thinking and lay it on the
23 table for the agreement states to look at. But it
24 would differ from an advanced notice in the sense that
25 in advanced notice sometimes we're much more searching

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 in a much broader scope of questions that we might be
2 asking about what approaches we might take. You could
3 envision a spectrum of proposed rules, preliminary
4 proposed rules that might even take some of that
5 configuration. But for the most part, we envision
6 that we will have a preferred concept that we would
7 like to label for the agreement states and look at
8 various options around that for a concept. It would
9 look much more like a proposed rule than it would like
10 an ANPR to us.

11 COMMISSIONER REMICK: Sounds like a
12 proposed rule.

13 COMMISSIONER de PLANQUE: It seems to me
14 from some of the correspondence I've been seeing from
15 the agreement states that they are interested in
16 participating more in the deliberative stage and in
17 the creative stage of these things. That sounds like
18 this is moving in the opposite direction. I sense
19 that they in some cases have a lot to offer in terms
20 of getting in on the early stages of any of these
21 rules. Is it still just the FACA requirements that
22 prevent this or is there something else?

23 MR. BANGART: Well, that is the major
24 impediment, but based on the October meeting, I
25 believe that as this approach was described to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 agreement states, that it is going to satisfy, or at
2 least it's capable of satisfying that concern that
3 they've expressed. When they give us comments through
4 the electronic bulletin board on the PPR, that we will
5 to a large degree incorporate those or be able to
6 incorporate those in the draft rule itself. So, it's
7 not actually sitting down and promulgating a rule with
8 us or drafting a rule with us, but based on what we
9 want from them, we've not just asked for superficial
10 comments, we've asked for substantive input at the PPR
11 stage so that we will have the views of the states
12 that can be folded into the draft rule itself.

13 So, I think that the agreement states are
14 willing to give this a try to see if indeed the
15 possibility at least of being substantively involved
16 actually takes place.

17 COMMISSIONER de PLANQUE: And it's your
18 impression that they see the root of -- what are we
19 calling it, preliminary proposed rule as being better
20 than an ANPR?

21 MR. BANGART: There was no expression by
22 the agreement states that an ANPR was preferred to the
23 PPRs. I remember the meeting.

24 MR. SCHWARTZ: That's correct.

25 MR. BANGART: Is that the way you remember

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 it?

2 MR. SCHWARTZ: Right.

3 MR. BANGART: Yes.

4 COMMISSIONER de PLANQUE: Okay.

5 MR. BANGART: There was strong support for
6 this approach.

7 (Slide) Slide 28 addresses AEOD's
8 initiative to establish an accurate database, and I
9 underline accurate, that captures materials program
10 events both in agreement states and non-agreements.
11 NRC and agreement states have been working
12 cooperatively to establish such a database and AEOD is
13 modifying their existing NRC licensee event database
14 to capture agreement state events as well. This
15 comprehensive database should be operational later
16 this year. We're planning to hold a training workshop
17 for agreement states where we will explain the
18 database and its use and improve understanding within
19 the agreement state community about abnormal
20 occurrence reporting and improved understanding about
21 just what qualifies as a medical misadministration.

22 COMMISSIONER ROGERS: When do you expect
23 to have that training session?

24 MR. BANGART: It's not scheduled firmly
25 yet, but we're targeting August to have that training

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 workshop.

2 (Slide) Now, next to last slide, and this
3 is a slide that attempts to summarize some of the
4 feedback that we've received from the agreement states
5 where they've expressed concern about the initiatives
6 that are underway as well as some of the recent
7 actions that the Nuclear Regulatory Commission has
8 actually taken.

9 The agreement states are strongly opposed
10 to any common performance indicator system that would
11 result in grading or ranking of agreement state
12 programs. They're also concerned about the use of
13 output indicators because there's doubt that they're
14 really a measure of the adequacy of their program.

15 On compatibility, while agreement states
16 recognize the need for uniformity and basic radiation
17 protection standards, they also believe that they
18 should be afforded a maximum amount of flexibility in
19 other program areas that they're implementing.

20 Agreement states have, as we discussed,
21 voiced concerns about the impediment that the Federal
22 Advisory Committee Act places on our working together
23 cooperatively. The agreement states are strongly
24 opposed to any rule promulgation that would establish
25 requirements that they would have to satisfy. One

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 comment has been put forward that NRC regulations
2 should apply only to NRC licensees and to the NRC
3 itself and our administrative procedures. So, there's
4 a very strong view there.

5 A handful of agreement states have voiced
6 concerns about the harsh or threatening tone in some
7 of our correspondence. The all agreement state letter
8 that we sent to the agreement states that identified
9 the importance of the promulgation of the new Part 20
10 is the premier example that the agreement states point
11 to as an unnecessarily harsh or threatening tone. We
12 did indicate there that if progress, meaningful
13 progress was not being made, that we would withhold
14 compatibility.

15 Finally, a handful of agreement states
16 have informally indicated or at least suggested that
17 they are concerned about the changes in the NRC
18 program that they've seen to date or that they
19 anticipate coming their way and that because of this
20 at the program director level they are wondering
21 whether or not they should indeed retain their
22 agreements with the NRC.

23 COMMISSIONER de PLANQUE: Dick, can you go
24 back to the first bullet for a moment?

25 MR. BANGART: Sure.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 COMMISSIONER de PLANQUE: Is the objection
2 to the grading an objection to grading that would
3 differentiate between levels of adequacy or is it an
4 objection to grading that would differentiate between
5 adequate or in some form of jeopardy?

6 MR. BANGART: Much more the former. The
7 draft that was discussed in October had some numbers
8 associated with various adequacy categories. That
9 prompted a very, very strong reaction. I think for
10 the most part that concern is based on the fact that
11 adequate should be adequate and there's no need to
12 differentiate within the adequacy category. And the
13 draft or the paper that's coming forward, if it
14 remains in its current form, will have no numerical
15 indicators in it.

16 COMMISSIONER de PLANQUE: Okay.

17 COMMISSIONER REMICK: Will have no, did
18 you say?

19 MR. BANGART: It will have no numerical
20 indicators, it will have qualitative rankings or
21 grades.

22 COMMISSIONER ROGERS: And some rationale
23 for the determination of those qualitative findings?

24 MR. BANGART: Yes, but more a policy
25 program level rationale. There are a lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 implementing procedures that we have yet to develop
2 that will be used in the actual performance indicator
3 program.

4 CHAIRMAN SELIN: This is a very frank
5 page, but in fact I don't think it quite captures the
6 tone of the agreement state letter. I thought the
7 letter the agreement states sent us was really quite
8 a very good letter. It addressed a lot of issues,
9 some of them I agreed with, some I disagreed with. A
10 couple of things they said I don't agree with, but
11 nevertheless it was a serious piece of correspondence
12 and I think a very positive step forward from some of
13 the things we've had in the past which seem much more
14 rhetorical or just not really addressing real issues.

15 The two particular issues, the one about
16 the performance indicators, and the other one about
17 codification of agreement state requirements, I think
18 they illustrated a need to talk some more because we
19 are not talking about coming up with a lot of rules
20 that the agreement states have to live up with, but
21 that we don't have a codification of our own side of
22 the agreement state program. It's very hard to go
23 someplace and say, "What is our policy towards this or
24 what is our policy towards that?" which is clearly
25 called for and I think if properly explained I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 think would generate much opposition from the
2 agreement states point. But the fact that they took
3 that much time, put that much thought into that letter
4 I think was a very positive sign.

5 I would however also point out that there
6 are other interested parties in addition to the
7 agreement states and the NRC. This is not a bilateral
8 negotiation, what would the agreement states like, but
9 what's the best way to serve the public. One of the
10 problems that we've had and even now continue to have
11 is we need one kind of behavior for those states that
12 are doing well and another kind for those that are
13 doing badly. We don't want to hit everybody with a
14 large club that says, "You're probably not going to be
15 compatible, so we want to complain about that." On
16 the other hand, we can't permit those states which are
17 consistently not compatible or short of resources, et
18 cetera, to just continue without being able to focus
19 some steps on these as well. It's, in large part, a
20 major part of the challenge I think that faces you.

21 Ultimately we are responsible for the
22 radiation health and safety of every citizen of the
23 United States, whether that citizen resides in an
24 agreement state or in an NRC regulated state. What we
25 do about that depends very much on the facts --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 MR. TAYLOR: Byproduct material.

2 MR. BANGART: The concept of probation,
3 suspension and when that happens is part of the review
4 that the programmatic assessment group will be
5 tackling. So, you'll be seeing that later this year.

6 I would also say that I agree
7 wholeheartedly with your characterization of the
8 letter from the organization of agreement states.
9 This slide was meant to, I guess, capture in part some
10 of the concerns that were identified in that letter,
11 as well as some more informal comments that we've
12 received from individual states. This was not meant
13 to capture just the agreement state letter.

14 CHAIRMAN SELIN: I think they're taking
15 our considerations very seriously and they're
16 apprehensive that are we really trying to improve the
17 program or just being tougher on them? Until they see
18 how we come out, some of them are sitting on the
19 fence.

20 MR. BANGART: Exactly so.

21 CHAIRMAN SELIN: But it's a very healthy
22 kind of conversation as well as apprehension, I think.

23 MR. BANGART: I view it as healthy. I'm
24 not sure everybody views it as healthy at this point.

25 (Slide) The last slide, just quickly,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 shows some of the interactions that we'll be having
2 with the agreement states during this upcoming year to
3 discuss issues. The next major event will be the
4 briefing of the Commission by the Organization of
5 Agreement State officials. That's currently scheduled
6 for February the 8th and I'm sure that a number of the
7 topics that we've touched on this morning will be
8 discussed by them as well.

9 This list is not all encompassing. There
10 are at least two other meetings, the low-level waste
11 regulators workshop and the annual agreement state
12 meeting that's held in October and will be held in
13 Maine this year that are not on this list. So, we're
14 going to be very busy doing program reviews, tackling
15 the initiatives and working with states that want to
16 become agreement states, as well as conducting the
17 number of workshops and meetings that are on-line.

18 That concludes the briefing.

19 CHAIRMAN SELIN: Thank you very much.

20 Mr. Taylor?

21 MR. TAYLOR: We have nothing further.

22 CHAIRMAN SELIN: Commissioner Rogers?

23 COMMISSIONER ROGERS: Well, I just wanted
24 to say that I thought it was an excellent briefing and
25 I feel that a number of the activities underway here

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 are very positive, very constructive and I think we
2 are finding a way to deal more professionally with the
3 agreement states within the context of the issues that
4 have been raised by congressional oversight
5 committees. I think that has to be kept very much in
6 mind as we proceed by the agreement states as well as
7 ourselves. As the Chairman has indicated, it is not
8 purely a bilateral matter of concern between the NRC
9 and the agreement states. There are other parties
10 concerned as well.

11 But I just wanted to say that I enjoyed
12 the briefing very much. I thought it was excellent.

13 MR. BANGART: That is a comment that I
14 didn't have on the next to the last slide, but the
15 view has also been voiced not just once and not just
16 twice that our agency indeed is over reacting to media
17 and congressional pressures.

18 CHAIRMAN SELIN: Yes, I think that's a
19 false statement really. There are a lot of people who
20 can be criticized for their participation in various
21 points of the NRC-agreement state interaction, but I
22 think the Commission itself was the most vulnerable to
23 criticism. We have supervised this program ourselves.
24 We have not kept on top of it. We have left it to a
25 mid-level official to be the primary policy as well as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

1 interaction person with the agreement states. I do
2 think we deserve the criticism of inaction at the
3 Commission level.

4 Certainly we have made it clear that the
5 interest in the program goes far beyond who runs the
6 program and how it's run and I think that will
7 continue. But with the one exception, and I think
8 it's the reluctance of EPA to go ahead with the
9 rescission of Subpart I, I think the results of the
10 congressional interest have been all positive. That
11 one I don't think has been positive, but in the other
12 cases I think they've been the proper points properly
13 pointed out and properly followed up on.

14 Commissioner Rogers?

15 COMMISSIONER ROGERS: I agree with that.

16 CHAIRMAN SELIN: Commissioner Remick?

17 COMMISSIONER REMICK: I'd also like to say
18 I appreciate the briefing. I think it was very timely
19 and important to get a status update. I agree with
20 the Chairman. I think some of the criticism we
21 received was justified and the Commission is paying
22 more attention now.

23 There is one thing that I haven't stated
24 in the past, but I must admit I had reservations when
25 we were talking about performance indicators in these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 programs. I wonder if we did not do ourselves a
2 disservice by not calling them must criteria, better
3 defined criteria and so forth rather than performance
4 indicators.

5 I know internally we don't like to grade
6 ourselves and I have found in the area of NRR they've
7 used something on two occasions now that I really
8 think is much better than the use of numbers and that
9 is the system used in the maintenance inspections and
10 the staff is now using in evaluating inspection
11 programs where we basically shade literally by color,
12 different colors to indicate you can -- there's a
13 matrix and you can quickly look where people are
14 performing in a strong manner and a weaker manner and
15 so forth without associating numbers and grades to it
16 and so forth. But one can very quickly from that
17 determine whether a program is doing quite well or not
18 so well or in between and so forth.

19 I just suggest that you might want to look
20 at that because I think it's, in my mind, better than
21 numbers.

22 Once again I thank you.

23 MR. BANGART: There's lots of opportunity
24 for us to consider additional thoughts before the
25 program is actually finalized and that's a good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 suggestion and we'll consider that one.

2 I'd also like to point out that the
3 agreement states have voiced the view that they very
4 much welcome the increased involvement by the
5 Commission and the EDO in the agreement state program.
6 I think that's a message that comes from nearly every
7 agreement state.

8 CHAIRMAN SELIN: Thank you.

9 Commissioner de Planque?

10 COMMISSIONER de PLANQUE: Yes. I would
11 also say this has been a very good and very useful
12 briefing and thank you for that.

13 I do sense that your workload is
14 tremendous right now with a lot of these special
15 activities that wouldn't normally come your way in
16 this program. So, I would hope that if the routine
17 work is jeopardized in any way, that you will make
18 that be known if there's a resource problem here.

19 MR. TAYLOR: I would like to note that the
20 staff is fairly heavily loaded in the office and we
21 are trying to make some assistance available to them
22 through some special funding. So, we are, as Mr.
23 Bangart proceeds, trying to get him assistance. He
24 mentioned some of the Oak Ridge work as an example and
25 we are mindful of the load to complete this work.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 It's going to be a very busy year in that office.

2 MR. BANGART: This is the first time the
3 office has ever used a technical assistance
4 contractor, I'm told.

5 COMMISSIONER de PLANQUE: Okay.

6 MR. TAYLOR: I suggested the same.

7 COMMISSIONER de PLANQUE: Thank you.

8 CHAIRMAN SELIN: Well, I would also like
9 to join my colleagues in the nice words. In fact,
10 I'll go a step further. One of the risks that we had
11 after the congressional hearing, et cetera, is that
12 we're just going to run after every individual
13 criticism. If somebody has an idea, we set up a task
14 force and run with the idea. I think you've done --
15 you and your colleagues, Mr. Bangart, have done really
16 quite a good job of trying to set some priorities and
17 relate these potential improvements to either more
18 efficient use of resources or some health and safety
19 considerations.

20 The bottom line is we don't have a lot of
21 real output indicators, but those that we do have seem
22 to say that the program has really done quite well.
23 I refer to the air quality indicators, the follow-up
24 on specific source losses and misplacement and the
25 medical performance in and out of the agreement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 states. But I think there's a very positive level of
2 activity that you're going on and I think you're to be
3 congratulated on that.

4 I should also point out that in the fee
5 study it was pointed out that in effect the Commission
6 or the Commission's licensees do subsidized the
7 Agreement State Program considerably. The agreement
8 states do not share in the general cost of those
9 activities such as some of the research and some of
10 the regulation drafting which affect citizens in
11 agreement states as well as citizens in NRC-regulated
12 states and that in the long run this is not a feasible
13 solution. The staff has recommended really primarily
14 that such activities be put in a part of the
15 appropriated funds which are not then rebilled to
16 licensees. But that's clearly the case and for all
17 the fact that there may be states that are sitting on
18 a fence and that under certain conditions would return
19 their authority to us, I think it's more likely that
20 additional states will go for agreement state status.
21 We could have a situation where the last 50 licensees
22 are bearing the costs for the other 22,000 and that's
23 not tenable.

24 So, there are some financial questions
25 being considered outside the context of your own

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 review.

2 MR. BANGART: Sure.

3 CHAIRMAN SELIN: Well, thank you very much
4 for an excellent job. We look forward to continued
5 progress and communications in this area.

6 MR. BANGART: Thank you.

7 (Whereupon, at 11:51 a.m., the above-
8 entitled matter was concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

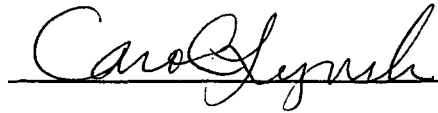
This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON STATUS OF NRC'S AGREEMENT STATES
PROGRAM

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JANUARY 10, 1994

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.



Reporter's name: Peter Lynch

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005



*United States
Nuclear Regulatory Commission*

STATUS OF THE AGREEMENT STATE PROGRAM

Commission Briefing

January 10, 1994

*Richard L. Bangart
Office of State Programs*



***United States
Nuclear Regulatory Commission***

AGREEMENT STATE PROGRAMS OVERVIEW

- ✓ ***AGREEMENT STATE STATUS***
- ✓ ***STATUS OF INITIATIVES***
- ✓ ***AGREEMENT STATE COMMENTS***
- ✓ ***FUTURE ACTIONS***



***United States
Nuclear Regulatory Commission***

**STATUS OF AGREEMENT STATES
(LAST FORMAL LETTER)**

- ✓ **15 STATES WITH ADEQUATE AND COMPATIBLE PROGRAMS**
- ✓ **8 STATES WITH ADEQUATE PROGRAMS**
- ✓ **6 STATES WITH FINDINGS FOR BOTH ADEQUACY AND
COMPATIBILITY WITHHELD:**
 - ▶ ***California***
 - ▶ ***Iowa***
 - ▶ ***Maine***
 - ▶ ***Nebraska***
 - ▶ ***Tennessee***
 - ▶ ***New Hampshire***



***United States
Nuclear Regulatory Commission***

***ANTICIPATED STATUS
(INCLUDING 6 REPORTS IN PROGRESS)***

- ✓ ***13 STATES WITH ADEQUATE AND COMPATIBLE PROGRAMS***
- ✓ ***10 STATES WITH ADEQUATE PROGRAMS***
- ✓ ***5 STATES WITH FINDINGS FOR BOTH ADEQUACY AND COMPATIBILITY WITHHELD:***
 - ▶ ***California*** ▶ ***Nebraska***
 - ▶ ***Louisiana*** ▶ ***Tennessee***
 - ▶ ***Maine***
- ✓ ***MARYLAND: WITHHOLD COMPATIBILITY; ADEQUACY REVIEW CONTINUES***



***United States
Nuclear Regulatory Commission***

CALIFORNIA

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD (1/93)***

- ✓ ADEQUACY:***
 - ▶ STAFFING***
 - ▶ BACKLOG INSPECTION***
 - ▶ ENFORCEMENT PRACTICES***
- ✓ COMPATIBILITY:***
 - ▶ ONE RULE OVERDUE (DECOMMISSIONING)***

STATUS: ✓ REGION V MEETINGS WITH STATE
***✓ FOLLOW-UP PROGRAM REVIEW SCHEDULED
JANUARY 18-27, 1994 TO EVALUATE PROGRAM
IMPROVEMENTS***



***United States
Nuclear Regulatory Commission***

IOWA

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD SINCE 1990.***

✓ ADEQUACY:

▶ MANAGEMENT DEFICIENCY

- ***INADEQUATE STAFF OVERSIGHT DUE
TO OTHER RESPONSIBILITIES***

▶ PROGRAMMATIC DEFICIENCIES

- ***STAFFING***
- ***TRAINING***
- ***ADMINISTRATIVE PROCEDURES***



**United States
Nuclear Regulatory Commission**

IOWA (CONTINUED)

✓ COMPATIBILITY:

▶ FINDING WITHHELD DUE TO ADEQUACY

STATUS: ✓ MAJOR NRC OVERSIGHT/ASSISTANCE (92-93)

✓ NRC PROGRAM REVIEW (12/93)

**▶ PRELIMINARY FINDING OF ADEQUACY AND
COMPATIBILITY**



***United States
Nuclear Regulatory Commission***

LOUISIANA

***PROBLEM: PRELIMINARY FINDINGS OF ADEQUACY AND
COMPATIBILITY WITHHELD (8/93)***

✓ ADEQUACY:

▶ SEALED SOURCE AND DEVICE REVIEWS

- INADEQUATE SUPPORTING
DOCUMENTATION***
- STAFF ACCEPTING VENDOR DATA
WITHOUT INDEPENDENT EVALUATION***
- DID NOT FOLLOW NRC GUIDANCE***
- STAFF LACK OF TRAINING IN SS&D
REVIEW PROCESS***



***United States
Nuclear Regulatory Commission***

LOUISIANA (CONTINUED)

▶ STATUS OF INSPECTION PROGRAM

✓ COMPATIBILITY:

***▶ ONE RULE OVERDUE (EMERGENCY
PLANNING)***

***STATUS: NRC HAS PROVIDED ASSISTANCE, GUIDANCE
DOCUMENTS AND TRAINING***



***United States
Nuclear Regulatory Commission***

MAINE

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD (4/93)***

✓ ADEQUACY:

- ▶ INSPECTION BACKLOG***
- ▶ STAFFING***
- ▶ ADMINISTRATIVE PROCEDURES***
- ▶ MANAGEMENT SUPERVISION OF STAFF***
- ▶ OUT-OF-STATE TRAVEL RESTRICTION***



***United States
Nuclear Regulatory Commission***

MAINE (CONTINUED)

✓ COMPATIBILITY:

‣ FINDING WITHHELD DUE TO ADEQUACY

STATUS: ✓ LETTER SENT TO GOVERNOR 7/28/93

✓ MAINE RESPONDED (8/93)

***✓ MEETING BETWEEN NRC AND MAINE PROGRAM
MANAGEMENT 11/22/93***

***‣ PROGRAM IMPROVEMENTS UNDERWAY
‣ NO ADDITIONAL NRC INITIATIVES NEEDED***

✓ FOLLOW-UP REVIEW (2/94)



**United States
Nuclear Regulatory Commission**

MARYLAND

PROBLEM: FINDING OF COMPATIBILITY WITHHELD SINCE 1986

- ✓ **COMPATIBILITY WITHHELD IN 1991 PENDING
COMPLETION OF SEVEN REGULATIONS**

**STATUS: ✓ BIENNIAL PROGRAM REVIEW INITIATED
SEPTEMBER 1993 - ADEQUACY UNDER REVIEW;
COMPATIBILITY WITHHOLDING TO CONTINUE**

- ✓ **INCREASE IN BACKLOG OF COMPATIBLE
REGULATIONS (11 AS OF 1/10/94)**

- ✓ **STATE'S SCHEDULE FOR COMPLETION OF NINE
REGULATIONS - APRIL 1994**



*United States
Nuclear Regulatory Commission*

MARYLAND (CONTINUED)

✓ OVERDUE RULES

- ▶ **TRANSPORTATION**
- ▶ **GLASS ENAMEL AND GLASS ENAMEL FRIT**
- ▶ **INDUSTRIAL RADIOGRAPHY STORAGE SURVEYS**
- ▶ **BANKRUPTCY NOTIFICATION**
- ▶ **MISADMINISTRATIONS RULE**
- ▶ **REQUIREMENTS FOR WELL LOGGING**
- ▶ **CERTIFICATION OF DOSIMETRY PROCESSORS**
- ▶ **DECOMMISSIONING RULE**
- ▶ **EMERGENCY PLANNING**
- ▶ **STANDARDS FOR PROTECTION AGAINST RADIATION**
- ▶ **SAFETY REQUIREMENTS FOR RADIOGRAPHIC EQUIPMENT**



***United States
Nuclear Regulatory Commission***

MARYLAND (CONTINUED)

OTHER ISSUES:

- ✓ ***NEUTRON PRODUCTS INC.***
 - ▶ ***ALARA CONCERNS/UNCORRECTED VIOLATIONS***
 - ▶ ***COURT RULING***
 - ▶ ***INSPECTION WITH NRC ASSISTANCE***
 - ▶ ***AERIAL SURVEY***
- ✓ ***SEALED SOURCE AND DEVICE REVIEW***
 - ▶ ***MISSING SOME SUPPORTING DOCUMENTATION FOR THE FOLLOWING***



***United States
Nuclear Regulatory Commission***

MARYLAND (CONTINUED)

- ***TO MAKE A DETERMINATION
REGARDING CATEGORY 1 INDICATOR***
- ***TO MAKE AN INDEPENDENT
DETERMINATION ON INTEGRITY OF
PRODUCT DESIGN***
- ***TO MAKE A DETERMINATION IF
ENGINEERING ANALYSIS WAS USED***

✓ SACRED HEART HOSPITAL

- ▶ ***MISADMINISTRATION EVENT***
- ▶ ***FOLLOWUP COORDINATION BETWEEN NRC
AND MARYLAND***



***United States
Nuclear Regulatory Commission***

NEBRASKA

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD (9/92)***

✓ ADEQUACY:

▶ LOW STAFFING

▶ INSPECTION PROGRAM

- 82 OF 138 LICENSEES OVERDUE FOR
INSPECTION***

***✓ COMPATIBILITY WITHHELD DUE TO ADEQUACY
FINDING***



***United States
Nuclear Regulatory Commission***

NEBRASKA (CONTINUED)

STATUS: REVIEW VISIT (9/93)

- ✓ STAFFING IMPROVED***
- ✓ INSPECTION BACKLOG REDUCED TO 29, PLANS
FOR ELIMINATING BY END OF 1994***
- ✓ STUDY OF LONG-TERM STAFFING NEEDS IN
PROGRESS***



***United States
Nuclear Regulatory Commission***

NEW HAMPSHIRE

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD (8/92)***

- ✓ RECURRING PROBLEMS SINCE 1982***
 - ▶ STAFFING***
 - ▶ BACKLOGGED INSPECTIONS***
 - ▶ DELAY IN ADOPTING REGULATIONS***

***STATUS: ✓ NRC CONDUCTED A FOLLOW-UP REVIEW OF THE
PROGRAM IN 1993. REPORT IS IN PROCESS.***

***✓ PRELIMINARY ADEQUACY FINDING, BUT
COMPATIBILITY WITHHOLDING TO CONTINUE
(DECOMMISSIONING AND EMERGENCY
PLANNING RULES OVERDUE)***



***United States
Nuclear Regulatory Commission***

TENNESSEE

***PROBLEM: FINDINGS OF ADEQUACY AND COMPATIBILITY
WITHHELD (12/91, FOLLOW-UP 8/92)***

✓ ADEQUACY:

- ▶ ***INSPECTION PROGRAM BACKLOGGED***
- ▶ ***LOW STAFFING LEVEL, HIGH STAFF
TURNOVER***
- ▶ ***ADMINISTRATIVE PROCEDURES NEEDED FOR
INCIDENT AND ALLEGATION HANDLING***

✓ COMPATIBILITY:

- ▶ ***PART 39 (WELL LOGGING) EQUIVALENT
RULES OVERDUE***



***United States
Nuclear Regulatory Commission***

TENNESSEE (CONTINUED)

STATUS: REVIEW VISIT (6/93)

✓ ADEQUACY:

- ▶ INSPECTION BACKLOG REDUCED BUT NOT ELIMINATED***
- ▶ FULLY STAFFED, BUT EXPERIENCE LEVEL STILL LOW***

✓ COMPATIBILITY:

- ▶ ALL REGULATIONS NEEDED HAVE BEEN ADOPTED***

✓ PROGRAM REVIEW SCHEDULED 1/94



***United States
Nuclear Regulatory Commission***

NEW 10 CFR PART 20

STATUS: ✓ 18 STATES ADOPTED (1/94)

▶ 3 STATES ADOPTED AS EMERGENCY RULES

***✓ 6 STATES EXPECTED TO ADOPT RULES BY
4/1/94***

***✓ 5 STATES EXPECTED TO ADOPT RULES
BETWEEN 4/1/94 AND 7/15/94***

***INITIATIVES: ✓ COMPREHENSIVE REVIEW OF AGREEMENT
STATES NEW PART 20 (ORNL)***



***United States
Nuclear Regulatory Commission***

PENDING NEW AGREEMENT STATE STATUS

- ✓ PENNSYLVANIA***
- ✓ MASSACHUSETTS***
- ✓ OHIO***
- ✓ OKLAHOMA***



***United States
Nuclear Regulatory Commission***

STATUS OF INITIATIVES

- ✓ INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM***
- ✓ COMPATIBILITY POLICY***
- ✓ IMPROVEMENTS IN NRC'S AGREEMENT STATES
PROGRAM***
- ✓ EARLY AND SUBSTANTIVE INVOLVEMENT IN
RULEMAKING***
- ✓ EVENT REPORTING***



***United States
Nuclear Regulatory Commission***

***STATUS OF INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM***

- ✓ DISCUSSED WITH STATES AND REGIONS IN
OCTOBER***
- ✓ COMMISSION PAPER AND DRAFT MANAGEMENT
DIRECTIVE***
- ✓ IMPLEMENTATION PREPARATIONS***
- ✓ PILOT PROGRAM BEGINNING MARCH 1994***



***United States
Nuclear Regulatory Commission***

STATUS OF COMPATIBILITY POLICY

- ✓ ***OPTIONS PAPER (SECY-93-290) TO COMMISSION IN OCTOBER***
- ✓ ***DISCUSSED OPTIONS WITH STATES IN OCTOBER***
- ✓ ***PROPOSED POLICY (SECY-93-349) TO COMMISSION IN DECEMBER***
 - ▶ ***POLICY ADDRESSES ADEQUACY AND COMPATIBILITY***
 - ▶ ***90 DAY COMMENT PERIOD***
- ✓ ***PUBLIC WORKSHOP FEBRUARY 1994***
- ✓ ***FINAL POLICY 60 DAYS FOLLOWING COMMENT PERIOD***



***United States
Nuclear Regulatory Commission***

IMPROVEMENTS IN NRC'S AGREEMENT STATES PROGRAM

✓ FIVE REVIEW AREAS

- ▶ ***GUIDANCE AND PRINCIPLES OF OPERATION***
- ▶ ***MANAGEMENT AND COMMISSION INVOLVEMENT
ACTION LEVELS***
- ▶ ***RECIPROCITY MATTERS***
- ▶ ***CODIFICATION OF STATE AGREEMENT PRACTICES***
- ▶ ***RESOURCE AND STAFFING REQUIREMENTS***

***✓ INTEGRATION OF ALL AGREEMENT STATE PROGRAM
INITIATIVES***



***United States
Nuclear Regulatory Commission***

EARLY AND SUBSTANTIVE INVOLVEMENT IN RULEMAKING

- ✓ PRELIMINARY PROPOSED RULE***
- ✓ ELECTRONIC BULLETIN BOARD***
- ✓ PUBLIC ACCESS***



***United States
Nuclear Regulatory Commission***

EVENT REPORTING

- ✓ AEOD DATA BASE***
- ✓ DISCUSSIONS AT MANAGERS WORKSHOP***
- ✓ EVENT CLASSIFICATION AND REPORTING
TRAINING***



***United States
Nuclear Regulatory Commission***

AGREEMENT STATE COMMENTS

- ✓ COMMON PERFORMANCE INDICATOR
"GRADING"***
- ✓ COMPATIBILITY POLICY FLEXIBILITY***
- ✓ FEDERAL ADVISORY COMMITTEE ACT
IMPEDIMENT***
- ✓ OPPOSITION TO CODIFICATION OF AGREEMENT
STATE REQUIREMENTS***
- ✓ NRC CORRESPONDENCE***
- ✓ PROGRAM RETURN(S) TO NRC***



***United States
Nuclear Regulatory Commission***

FUTURE ACTIVITIES

- ✓ COMMISSION BRIEFING BY ORGANIZATION OF AGREEMENT STATES - FEBRUARY***
- ✓ COMPATIBILITY WORKSHOP - FEBRUARY***
- ✓ SDMP WORKSHOP - MARCH***
- ✓ AGREEMENT STATES MANAGERS WORKSHOP - JUNE***
- ✓ EVENT CLASSIFICATION AND REPORTING TRAINING - AUGUST***