

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**Title: BRIEFING ON PERFORMANCE INDICATORS IN
 MATERIALS PERFORMANCE EVALUATION
 PROGRAM - PUBLIC MEETING**

Location: Rockville, Maryland

Date: Thursday, March 9, 1995

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON PERFORMANCE INDICATORS IN
5 MATERIALS PERFORMANCE EVALUATION PROGRAM

6 ***

7 PUBLIC MEETING

8 ***

9
10 U.S. Nuclear Regulatory Commission
11 One White Flint North
12 Rockville, Maryland

13
14 Thursday, March 9, 1995
15

16 The Commission met in open session, pursuant to
17 notice, at 2:00 p.m., Ivan Selin, Chairman, presiding.
18

19 COMMISSIONERS PRESENT:

20 IVAN SELIN, Chairman of the Commission

21 KENNETH C. ROGERS, Commissioner

22 E. GAIL de PLANQUE, Commissioner
23
24
25

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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

2 JOHN C. HOYLE, Secretary of the Commission

3 KAREN CYR, General Counsel

4 JAMES TAYLOR, Executive Director for Operations

5 RICHARD BANGART, Director, Office of State
6 Programs

7 CARL PAPERIELLO, Director, Division of Industrial
8 and Medical Nuclear Safety, NMSS

9 RONALD BELLAMY, Chief, Nuclear Materials Safety
10 Branch, Region I

11 GEORGE PANGBURN, Section Leader, Operations
12 Branch, NMSS

13 KATHLEEN SCHNEIDER, Senior Project Manager, Office
14 of State Programs

15 G. WAYNE KERR, Illinois Department of Nuclear
16 Safety (IDNS), Assistant Office Manager, Office
17 of Radiation Safety

18 GORDON APPEL, Deputy Director, IDNS

19 WILLIAM SINCLAIR, Director, Utah Division of
20 Radiation Control

21 DENNIS O'DOWD, New Hampshire, Supervisor,
22 Radioactive Material Section

23

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P R O C E E D I N G S

] 2:00 p.m.]

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

This afternoon the Commission is to receive a briefing from the NRC Headquarters and regional staff, and from the representatives of the Organization of Agreement States on the pilot program to implement the common performance indicators that we hope to use in the evaluation of both regional and Agreement State materials radiation safety programs.

As I'm sure everybody here realizes, the development of common performance indicators and the development of a new Commission policy regarding compatibility and adequacy of Agreement State programs have gone hand in hand as the centerpiece of our efforts to achieve an effective materials radiation safety program to assure the general public that their protection from radiation threats will be basically comparable whether they have to live in an agreement state or in an NRC-regulated state.

As I noted previously and often, common performance indicators, if done well, represent the most effective tool available for measuring project towards achieving this objective.

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1 The Commission is pleased that the staff has
2 completed the pilot program in such a timely manner. This
3 has been a difficult program, hard to conceive and
4 complicated to execute. Furthermore, we're pleased that the
5 Agreement States have been active participants, both as
6 commentors on the common performance indicators and as
7 volunteers in the pilot project to implement them.

8 Accordingly, we are very interested to hear what
9 the staff and what the Agreement States have learned from
10 the pilot program and to see if the two reports have
11 anything in common. We're looking forward to receiving your
12 recommendations regarding the future implementation of the
13 Integrated Materials Performance Evaluation Program.

14 Commissioners?

15 Mr. Taylor?

16 MR. TAYLOR: Good afternoon.

17 As the Commission is aware, within the NRC this
18 has been an effort that has been cooperative among the
19 Office of NMSS, the Office of State Programs, and the
20 regions. I'll note that because there's been good
21 cooperation, I think, across these groups as well as the
22 cooperation by the Agreement States.

23 The presentation today will be started by -- well,
24 let me introduce. You know Kathy Schneider from State
25 Programs, Dick Bangart. Ron Bellamy on the end is here

1 representing the regions and will have some comments, and
2 from NMSS, Carl Paperiello and George Pangburn. George will
3 commence the briefing.

4 MR. PANGBURN: Good afternoon, Doctor Selin,
5 Commissioner Rogers, Commissioner de Planque. We appreciate
6 the opportunity to brief you this afternoon on the results
7 of the pilot effort using IMPEP.

8 Slide number 1, please.

9 [Slide.]

10 MR. PANGBURN: Until 1993, the reviews of regional
11 and Agreement State programs were conducted using different
12 measures. In large part, this reflected the different
13 relations between NMSS and the regions and between OSP and
14 the Agreement States. In the 1993 report, the General
15 Accounting Office recommended that a more uniform approach
16 using common performance indicators be adopted by NRC to
17 assess performance and assure equivalent levels of safety
18 nationwide.

19 Slide number 2.

20 [Slide.]

21 MR. PANGBURN: The staff proposed a pilot program
22 to test the use of these indicators in SECY-94-011. In the
23 staff requirements memorandum of March 16th, 1994, the
24 Commission approved the pilot program with modifications,
25 posed several questions to be answered by Management Review

1 Board, and directed the staff to report back. SECY-95-047
2 provided that report and is the basis of today's briefing.

3 Slide number 3.

4 [Slide.]

5 MR. PANGBURN: Subsequent to the Commission's
6 approval, we proceeded with the pilot program in Regions I
7 and II and we also sought Agreement States to volunteer for
8 the pilot. All three of the states that were contacted,
9 Utah, Illinois and New Hampshire, agreed to participate.
10 The reviews were conducted from March through August of 1994
11 using the five common performance indicators shown here on
12 the slide. We also used other non-common indicators as
13 warranted.

14 Slide number 4.

15 [Slide.]

16 MR. PANGBURN: Our approach in both the regions
17 and the Agreement States was the same, namely to issue a
18 questionnaire on the program areas to be covered in the
19 review, review the results of that questionnaire, conduct an
20 on-site technical review of selected licensing, inspection,
21 incident and allegation files, accompany inspectors in the
22 field and interview staff and management to clarify issues
23 raised by any of the above.

24 We began each review with entrance meetings
25 involving management and staff to describe the scope,

1 process and the performance criteria. At the end of the
2 review, the review team met to discuss the findings for each
3 of the indicators relative to the performance criteria for
4 each indicator. We then presented our preliminary findings
5 to regional or state management and staff.

6 After the review was concluded, we wrote a draft
7 report and sent it to the region or the state for factual
8 comment. We considered those comments and developed a
9 proposed final report that went forward to the five member
10 Management Review Board or MRB. The MRB met separately on
11 each review and invited the region or Agreement State to
12 have a representative present. In addition, the volunteer
13 Agreement States, as well as the involved NRC regions, were
14 tied in by telephone to those meetings. We made changes to
15 the report requested by the MRB in development of a final
16 report.

17 Slide number 5.

18 [Slide.]

19 MR. PANGBURN: At this point I'd like to
20 characterize how IMPEP differs from past review approaches.

21 First, in terms of the regions, it provided
22 greater structure to the regional reviews, identifying in
23 advance what the criteria and the indicators were as far as
24 performance. The technical focus of the reviews under IMPEP
25 was also a welcome change to regional licensing and

1 inspection staff. The IMPEP process provided an increased
2 emphasis on performance in Agreement State reviews and it
3 also provided an opportunity for the state or region to
4 comment on the draft report. Although this had been past
5 practice in NMSS review of the regions, it had not been for
6 Agreement States.

7 Slide number 6.

8 [Slide.]

9 MR. PANGBURN: The IMPEP process afforded more
10 flexibility to the review teams to focus their efforts on
11 the identification of root causes of program weaknesses than
12 traditional Agreement State reviews. The MRB, which is
13 unique to IMPEP, added a senior level review of the team's
14 findings, greater program visibility and an appeal forum for
15 states or regions to present their case. Attendance at the
16 meetings also afforded the states or regions an opportunity
17 to offer their views relative to the finding on their
18 programs. Finally, IMPEP differed from past regional and
19 Agreement State reviews in its use of an inter-office,
20 inter-disciplinary team from NMSS, State Programs and the
21 regions.

22 Slide number 7.

23 [Slide.]

24 MR. PANGBURN: At this point I'd like to discuss
25 some of the general results of the pilot program.

1 For the Agreement State reviews, we made findings
2 based on the 30 indicators in the current Commission policy
3 statement, as well as the five common performance
4 indicators. The findings regarding the adequacy of the
5 programs were the same in both cases. That is, all three
6 Agreement States reviewed in the pilot program were found
7 adequate under both the current framework as well as the
8 IMPEP approach.

9 We found the five performance indicators to be
10 useful and viable in reviewing materials programs, but if we
11 go forward with IMPEP some changes in criteria and
12 terminology are needed. The indicator on status of
13 materials inspection program was considered by the states to
14 be unnecessarily prescriptive. This indicator can be
15 modified, in our review, to be less prescriptive and yet
16 provide reasonable assurance that region and Agreement State
17 inspections are conducted at a frequency that ensures
18 protection of public health and safety. We would revise
19 this indicator to be somewhat less quantitative and allow
20 for more flexibility in the planning and execution of
21 inspections. This flexibility is consistent with revisions
22 the staff has planned for Inspection Manual Chapter 2800.

23 Slide number 8.

24 [Slide.]

25 MR. PANGBURN: I'd now like to address specific

1 results of the pilot program in terms of program review
2 findings. Three of the programs reviewed, Regions I and II,
3 as well as New Hampshire, were initially found satisfactory
4 on all five of the indicators. The review team's initially
5 finding in the Utah program was satisfactory on four of
6 those indicators and marginally satisfactory on the
7 technical quality of inspections. However, in its review of
8 the Utah report, the MRB disagreed with the team's finding
9 on technical quality of inspections and found Utah's
10 performance to be satisfactory.

11 The Illinois program was found satisfactory on
12 four of the five indicators and marginally satisfactory on
13 the status of materials inspection program. In that case,
14 the MRB agreed with the team's finding. However, in
15 discussions with representatives at the Illinois Department
16 of Nuclear Safety, the MRB recommended that given that IMPEP
17 was a pilot program and that IDNS was taking appropriate
18 steps to deal with its inspection backlog, the finding be
19 labeled as "needs improvement."

20 Slide number 9.

21 [Slide.]

22 MR. PANGBURN: That concludes the discussion of
23 specific programmatic review findings. However, the
24 Commission, in its SRM, also directed us to collect
25 information on operational or output indicators which were

1 not used in the programmatic review findings. Accordingly,
2 we collected operational data in the five categories shown
3 on the slide. No regulatory program can preclude the
4 occurrence of such events, but NRC and the states have been
5 successful in reducing the number of these events to very
6 low levels. Similar reviews were offered by the Agreement
7 States at the Portland All Agreement State Meeting and
8 during the pilot program. Accordingly, we believe this
9 information should not be used for individual evaluations of
10 regional or Agreement State programs, but should be
11 collected for inclusion in a national database and analyzed
12 to identify trends in materials events.

13 COMMISSIONER de PLANQUE: That triggered something
14 obviously. Before you go on, I essentially agree with what
15 you're saying, but I would worry how are you going to have
16 any feedback or communication between AEOD on what's going
17 on in these areas and what you're doing in terms of
18 reviewing state programs. Will they ever meet up in that
19 sense?

20 MS. SCHNEIDER: You know, right now there is the
21 program we're working with the states and AEOD and NRC to
22 get the electronic transfer of information. We've had
23 training courses. In that is the mechanism to feed back to
24 the states what information we are learning. So, we are
25 planning on continuing that exchange of information between

1 NRC and the states.

2 COMMISSIONER de PLANQUE: But will that
3 communication be with AEOD and the states or will State
4 Programs get into the loop?

5 MS. SCHNEIDER: Oh, I believe we're on -- Dick,
6 correct me if I'm wrong. We are part of the loop.

7 MR. BANGART: Yes. It will be a database to which
8 there will be common access by NRC staff, the Office of
9 State Programs staff and the Agreement States. So, it will
10 be a common database that will be available for everybody.
11 We will have the benefit of AEOD analysis of events at the
12 time of each program review because that's the source of the
13 data that the IMPEP team will be using.

14 COMMISSIONER de PLANQUE: Okay. The other thing I
15 noticed in those data that were in the appendix, if you -- I
16 realize it's difficult to get denominators on each of those.
17 We've been over this issue many, many times. In some areas
18 it's maybe impossible, in some areas it may be easier. But
19 one thought is to just simply put the number of licensees in
20 each of those categories. It gives you some measure of what
21 kind of proportionality you might expect.

22 MS. SCHNEIDER: We do have those numbers, if
23 you're interested.

24 COMMISSIONER de PLANQUE: Yes.

25 MS. SCHNEIDER: It's what we found for --

1 COMMISSIONER de PLANQUE: Yes, I've got them.

2 MS. SCHNEIDER: Okay.

3 CHAIRMAN SELIN: She's saying we should be
4 interested.

5 MS. SCHNEIDER: We did have them, but we didn't
6 include them in the slide.

7 COMMISSIONER de PLANQUE: Yes. But I know that's
8 always been a discussion, "Well, we can't find the
9 denominators. How do we do this?" But just looking at
10 those numbers, which I did happen to get, the proportions do
11 make some sense. In spite of the fact that we all know
12 these are random events, they're down in the noise, they're
13 hard to control. But the proportionality at least gives you
14 some feel for whether they're reasonable.

15 DR. PAPERIELLO: The numerators still need
16 clarification too, particularly when you deal with loss of
17 controlled license material and contamination events. You
18 have to distinguish between losing a very small source and
19 losing a very large source. So, there's still some more
20 work.

21 I would emphasize I consider this data extremely
22 important because this is the bottom line safety in what we
23 do. If people are protected from dose and protected from
24 lost material, then we are doing our job.

25 CHAIRMAN SELIN: Which leads, by coincidence, into

1 my remark. I accept Mr. Bangart's remark as far as it goes.
2 I mean we're not going to give people an A if they had zero
3 incidents, B if they had one and C if they had two. On the
4 other hand, I wouldn't go as far as your statement that
5 we're not going to use these data in the evaluation. Data
6 have to go through an AEOD scrub. They're most useful to
7 look at what's going on in the program as a whole as opposed
8 to state by state. But when integrated over time, they
9 ought to tell us -- I mean if consistently one state has not
10 just one year but consistently has output results that are
11 somewhat less than -- I mean rather significantly less than
12 the median or better than the median, that tells us
13 something also.

14 So, I just would hope that in communicating with
15 the states we don't mislead them by just saying, "We're not
16 going to use these data in evaluations." They either have
17 to be analyzed in some detail for a given year or looked at
18 as trends, but they are also important points. I hope we're
19 not going to be collecting output data just so we have some
20 statistics on the --

21 MS. SCHNEIDER: Yes. We've talked about it in
22 State Programs and just that sort of thing.

23 COMMISSIONER ROGERS: Well, before we leave this,
24 it's obviously a topic of interest to us all. I don't know
25 if it's purely statistical. I mean these are low numbers

1 and we would like to think that they are perhaps, but if
2 they are purely random, and I don't think truly for each
3 state, then I don't see how we can do what we've just said
4 we're going to do here. If they're really down as noise,
5 then there are going to be fluctuations in some way and they
6 can't be used as a measure of whether a state is doing well
7 or not.

8 So, I think it's extremely important to try to
9 analyze these data in some way to see whether they do in
10 fact meet some kind of a test. I don't know what that test
11 might be, but they really are random that we're down in the
12 noise level. This really is at the statistical limit in a
13 certain sense. I think it's a very important question
14 because it relates to how much regulation we're applying and
15 whether if we really are there then the notion of adding
16 anymore regulation really doesn't make any sense at all. If
17 we really are there and are sure about it, then one is faced
18 with the interesting question of, "Well, were we there
19 before we had some regulations that we have right now and
20 are we over regulating beyond what is necessary to achieve
21 that level?"

22 So, I think the question of whether you really are
23 at the kind of noise limit, that these are fluctuations that
24 are just going to be there and deterministic approaches to
25 eliminating them will achieve nothing. Whether that is, in

1 fact, the case is a very important question. I think it's
2 really vital to be able to pin that down, if one can.

3 I suspect it's not easy to do, but it certainly
4 relates to the question of whether the amount of regulation
5 that's being applied is adequate or maybe even more than
6 adequate. If we could have achieved this level without some
7 of the regulations that we have right now or some of the
8 approaches that we have right now, then beyond that we're
9 really unnecessary. I think this is a very important
10 question to try to get a handle on.

11 DR. PAPERIELLO: I agree with you a hundred
12 percent. That's why I say I consider these things extremely
13 important, but I have to have a big enough number so a year
14 to year change -- you know, standard deviation of one is
15 one. We anticipate and we're going to be talking to you in
16 about a month on business process reengineering in a
17 materials program. I envision that we will be less
18 prescriptive in the regulations. Once we make that change,
19 we're going to need things like this to show that we have
20 not affected public health and safety. So, that's why I
21 considered these things very important.

22 I just happened to read -- we've got in our
23 library the '93 edition of the National Safety Council and
24 it's fascinating data on industrial accidents and things
25 like that. I think we have a good story to tell. I think

1 these data tell a good story and that's why I think they're
2 important. I think we have been successful.

3 COMMISSIONER de PLANQUE: I think we all agree
4 that they can't just be shuttled aside and looked at just in
5 a statistical sense, but it's not exactly clear how we're
6 going to use them henceforth. I sense that you also
7 recognize the importance of these and are struggling with
8 exactly how to use them in the program.

9 MR. BANGART: I believe that AEOD would also say
10 that even though these may be essentially random, there may
11 be some events or pattern of events that might, with further
12 analysis, show that there's a problem with certain devices
13 that are used, for example. That could be of benefit.

14 COMMISSIONER ROGERS: Yes.

15 MR. BANGART: Also we know that historically
16 there's a suggestion at least that there is a difference in
17 reporting levels or at least in some categories between NRC
18 states and non-NRC states. If indeed there are no
19 increasing or decreasing trends, but still there are
20 differences that might be some insight of what elements of
21 our program versus an Agreement State program might be more
22 effective. So, there is benefit, I agree, in further
23 evaluating this data.

24 MR. PANGBURN: Slide number 10, Staffing and
25 Resources.

1 [Slide.]

2 MR. PANGBURN: Throughout the pilot program, we
3 looked at the work load and the resources that were needed
4 to implement this process. Typical review involved a four
5 to five person team on-site for a week and the total
6 resource commitment was approximately four weeks from each
7 team member and five weeks from the team leader, including
8 the on-site time. To review each region and most Agreement
9 States on a biennial basis, a total of 15 reviews would need
10 to be conducted per year and would require approximately
11 eight FTE. Agreement State participation on the review
12 teams could enhance the process and at the same time offset
13 some NRC costs.

14 COMMISSIONER de PLANQUE: Before you go on, and I
15 don't want to get into a big detailed discussion of numbers
16 right now, but I thought they might be slight underestimates
17 because it wasn't clear to me that the accompanying
18 inspection time was in those numbers. Also, when I added up
19 the number of Agreement States and regions, I got a higher
20 number. Was this number developed intending to increase the
21 period between inspections?

22 MR. PANGBURN: We were looking at doing reviews on
23 a biennial basis.

24 COMMISSIONER de PLANQUE: Yes.

25 MR. PANGBURN: Doing two regions each year and

1 about 13 Agreement States.

2 COMMISSIONER de PLANQUE: That gives you 26
3 Agreement States.

4 MS. SCHNEIDER: There was a little bit of
5 extending past the two year, I think for scheduling and
6 that. We find just normally when we're doing our reviews
7 that happens.

8 MR. PANGBURN: Yes.

9 COMMISSIONER de PLANQUE: Okay.

10 MR. PANGBURN: That's why I said most Agreement
11 States on a biennial basis.

12 COMMISSIONER de PLANQUE: Okay. Well, I didn't
13 know if you were incorporating in already the concept of
14 extending the period for good performance.

15 MS. SCHNEIDER: No, this works out even doing it
16 like we do now, with the biennial. It works out about that.
17 Now, the on-site -- the inspector accompaniment time was
18 figured into the number.

19 COMMISSIONER de PLANQUE: I just want to make sure
20 you have sufficient resources to do what you need to do.

21 MS. SCHNEIDER: Yes.

22 MR. PANGBURN: So do we.

23 Slide number 11.

24 [Slide.]

25 MR. PANGBURN: The resources were a significant

1 consideration in our recommendation on proceeding with
2 IMPEP. More specifically, NMSS is not currently budgeted to
3 conduct reviews of Agreement State programs and full
4 participation by NMSS in the program would entail about a
5 two FTE shortfall. We looked at several options to deal
6 with that shortfall, including transfer of FTE from another
7 office, use of contractors on review teams, reducing the
8 frequency of reviews, Agreement State participation on the
9 teams, and alternative team composition. As I've shown on
10 the slide here, we plan to use a combination of the first
11 four options in dealing with that shortfall.

12 CHAIRMAN SELIN: I take it that the amount of work
13 to do under these reviews is considerably more than to do a
14 traditional Agreement State review. Yes?

15 MS. SCHNEIDER: Yes, it can be. We also think as
16 we go through this process we'll get more efficient. I
17 think for states that have good programs, we'll have less
18 work because we don't be doing the 30 indicators. For those
19 states though where there are problems, we'll be looking at
20 root causes in that and it will be more resource intensive.
21 Certainly the teams are larger than we have presently doing
22 the states. So, in that case there is more resources.

23 MR. PANGBURN: Slide number 12.

24 [Slide.]

25 MR. PANGBURN: We received considerable interest

1 from the Agreement States in participating in this process.
2 That interest included not only participating on the
3 Management Review Board, but also on the actual review
4 teams. The Federal Advisory Committee Act, FACA, may impose
5 some constraints on the use of Agreement State personnel in
6 the process and we worked with the Office of General Counsel
7 to consider various ways to involve the Agreement States
8 within the limits of FACA.

9 As far as participation on the teams are
10 concerned, we looked at four options. The first was not to
11 have Agreement State participation at all, and although this
12 is clearly within FACA constraints, it would be inconsistent
13 with the interest of the states and with the Commission's
14 interest in obtaining the benefits of Agreement State
15 perspectives and experience.

16 The second was to execute an inter-governmental
17 personnel agreement with one or two Agreement State
18 personnel for a period of six months to a year. However,
19 the Agreement States have not shown a high degree of
20 interest in IPAs in the past, largely because it's difficult
21 for many programs to give up a staff member for this long.

22 The third approach would be to have an independent
23 third party, such as the Conference of Radiation Control
24 program directors, conduct all the review. This option
25 could be a difficult and expensive one for NRC to implement.

1 Finally, a fourth approach would be to have five
2 to ten Agreement State personnel from different states
3 trained and qualified to participate as team members on the
4 review teams. This would provide for meaningful
5 participation by the states, would minimize the impact on
6 any one state, and appears to be within the constraints of
7 FACA.

8 CHAIRMAN SELIN: This would be like a jury pool.
9 I mean it's people on call --

10 MR. PANGBURN: That's correct.

11 CHAIRMAN SELIN: -- but they would only do this a
12 small part of their time?

13 MR. PANGBURN: That's correct. That latter option
14 is our preferred approach.

15 Slide number 13.

16 [Slide.]

17 MR. PANGBURN: With respect to participation on
18 the MRB, full membership and voting privileges by an
19 Agreement State representative would appear to require
20 compliance with FACA requirements and would not appear to
21 fall within the operational committee exemption. Our
22 preferred option in Agreement State involvement on the MRB
23 is to establish an Agreement State liaison, possibly
24 selected by the Organization of Agreement States. The
25 liaison would participate in the MRB discussions of the

1 program under review, including being able to question the
2 review team, but would not have a vote.

3 CHAIRMAN SELIN: That's just because of FACA?

4 MR. PANGBURN: Yes.

5 CHAIRMAN SELIN: In other words, if the Federal
6 Advisory Committee Act were revised so that all governmental
7 people at a non-federal level could also participate, you
8 would have a different recommendation? You would prefer a
9 full-time Agreement State person if it weren't for FACA or
10 did you just not face up to that?

11 MS. SCHNEIDER: I don't think we considered that
12 when we were developing this paper.

13 CHAIRMAN SELIN: Because that might change.

14 MS. SCHNEIDER: Yes.

15 CHAIRMAN SELIN: I mean it's one of the laws that
16 might change.

17 COMMISSIONER de PLANQUE: Your words in both the
18 paper and again in presenting this sounded not definite.
19 Are we sure that it precludes the option of the state person
20 voting?

21 MS. CYR: Yes.

22 COMMISSIONER de PLANQUE: Okay. Thank you.

23 CHAIRMAN SELIN: We have the most efficient
24 General Counsel in history.

25 COMMISSIONER de PLANQUE: Case dismissed.

1 MR. PANGBURN: Slide number 14.

2 [Slide.]

3 MR. PANGBURN: In discussing how we might
4 implement this process once we concluded it was a viable
5 approach, a number of questions arose that needed
6 consideration. The first of these was how to implement the
7 program in Agreement States given the number of major policy
8 initiatives that are in the works currently. The
9 development of an Agreement State umbrella policy, as well
10 as a policy statement on adequacy and compatibility, for
11 example. These initiatives could change the premises for an
12 adequate and compatible program and thereby the criteria
13 used in reviewing these programs.

14 Another question is how to review those aspects of
15 an Agreement State program which at NRC are headquarters
16 functions that don't have a comparable component in the
17 regions. These include licensing of uranium mills,
18 regulation of low-level radioactive waste disposal
19 facilities, and sealed source and device reviews.

20 Finally, there's a question of how to address a
21 number of subject areas that are category 1 indicators under
22 the current May 1992 policy statement but are not picked up
23 within the scope of the common performance indicators as
24 we've defined them. In addition to compatibility of
25 regulations, these include enforcement procedures, legal

1 authority and quality of emergency planning.

2 Slide 15.

3 [Slide.]

4 MR. PANGBURN: Taking into account the questions
5 that I just mentioned, we developed four options for
6 implementation of IMPEP. The first option would be to delay
7 its implementation in Agreement States until the umbrella
8 policy and compatibility policy are issued in final form.
9 It would basically be a business as usual approach for the
10 Agreement States. However, we would use the IMPEP teams and
11 process and the five indicators in review of the regional
12 programs.

13 The second option would be to implement IMPEP in
14 1995 on an interim basis in the regions and the Agreement
15 States. We'd use the five common performance indicators to
16 determine adequacy of materials programs. We would add
17 compatibility regulations and legal authority, including
18 enforcement, as non-common indicators, would not have a
19 component in the regions. The low-level waste, uranium mill
20 or sealed source and device programs in the Agreement States
21 would also be reviewed outside the scope of the common
22 indicators using appropriate criteria from the existing
23 Agreement State policy statement. We'd revisit IMPEP when
24 Commission decisions on adequacy and compatibility were
25 complete.

1 The third option is the same as option 2, but in
2 the Agreement States the low-level waste, uranium mill and
3 sealed source and device programs would be included within
4 the scope of the common performance indicators rather than
5 handled separately. This would mean, for example, that an
6 indicator on the quality of licensing in an Agreement State
7 could include both byproduct material licensing and sealed
8 source and device reviews while a comparable review of that
9 indicator in a region would not include sealed source and
10 device reviews.

11 Slide 16.

12 [Slide.]

13 MR. PANGBURN: It shows option 4, which is that we
14 would use certain aspects of the IMPEP approach, the inter-
15 office teams and the MRB process in 1995. However, the
16 Agreement State reviews would be done using the current 30
17 indicators, while the regions would be done using the five
18 common performance indicators. The staff's recommendation
19 is option number 2. We think it's responsive to our
20 commitment to use common performance indicators. It ensures
21 that all category 1 indicators are covered through both the
22 common and the non-common and it reflects the structural
23 differences between the regional and the Agreement State
24 programs.

25 CHAIRMAN SELIN: I'd like to point out that there

1 really are two dimensions in these options and you've got
2 them mixed together. So, you ought to separate them out.
3 First is the speed with which the program is implemented and
4 the second is what the program is. The speed, I'm sure I'd
5 like to hear what the Agreement States have to say before I
6 make any comment on that.

7 But as far as the program indicators, again there
8 are two things we're trying to do with these common
9 performance indicators. One of them is to have some
10 comparability in evaluation where you have a large universe,
11 29 states, five regions. But the second is to get
12 nationwide statistics which cover both Agreement State and
13 NRC licensees on a common basis. So few states have low-
14 level waste facilities, uranium mills and I'm not so sure
15 about sealed sources, that I share what I perceive to be
16 your skepticism about whether we want to build these into
17 the common performance indicators when they're not common.
18 But I don't want to forego them either.

19 For those states where this is relevant and for
20 Headquarters, I would like to collect those statistics on a
21 comparable basis. I don't want an indicator that combines
22 sealed sources and byproducts or that looks at low-level
23 waste the same as it looks at contaminated sites because
24 you're just destroying information by integrators, but I
25 still would like to make sure that whatever we do for those

1 states where this is relevant and for Headquarters we
2 collect common statistics so that we still have the
3 objective of saying -- well, low-level waste is only in the
4 states, but uranium mills and sealed sources are dealt with
5 the same way whether they're state facilities or federal
6 and, if not, that we know that.

7 So, when developing the options, I just hope you
8 will check that one consideration I've given you to make
9 sure that it's separately taken account. I don't know which
10 alternative it comes up with, but none of the alternatives
11 seem to do exactly what I said, which is collect comparable
12 data but don't necessarily integrate them into broader
13 performance indicators.

14 MR. PANGBURN: That concludes my presentation.

15 MR. TAYLOR: Next Ron Bellamy will --

16 CHAIRMAN SELIN: I would like to point out the
17 sort of lack of controls when you have a couple people in
18 the Chairman's office working on asking the question and
19 they go down to the staff and answer the question.

20 MS. SCHNEIDER: Oh, no.

21 CHAIRMAN SELIN: But I'm sure that it got through
22 review.

23 MR. TAYLOR: It got through review.

24 Mr. Chairman, Ron Bellamy will give some regional
25 perspectives on this program.

1 DR. BELLAMY: Thank you. The comments that I want
2 to make this afternoon are not only from my perspective as
3 the Regional Nuclear Materials Safety Branch chief, but they
4 also reflect the experience and the input of Region II.
5 Regions I and II were the two regions that quickly
6 volunteered to participate in the IMPEP pilot program in
7 1994.

8 [Slide.]

9 DR. BELLAMY: As slide 18 indicates, there are
10 many strengths in the IMPEP program, particularly when
11 compared to the previous national program reviews that the
12 Program Office has conducted of regional performance. With
13 the present IMPEP program, review areas and review criteria
14 are now consistent from year to year and from the regions'
15 perspective this a major improvement, that we know in
16 advance what is to be expected of us.

17 Second, the review criteria are focused on overall
18 performance with a clear emphasis on public health and
19 safety issues.

20 Third, the questionnaire that we receive in
21 advance of the actual review and which we respond to in
22 writing was found to be easy and straightforward to respond
23 to and the existing management information systems used for
24 daily operation of the region contain the overwhelming
25 majority of the requested information for the performance

1 indicators.

2 Next we feel that preparation for the review was
3 much less resource intensive than past reviews, which we
4 consider to be another major improvement and could be done
5 by mid-level management. By mid-level management in the
6 region I mean at the branch chief level, without the
7 involvement of more senior levels of management.

8 CHAIRMAN SELIN: Are you talking about now from
9 the reviewee point of view?

10 DR. BELLAMY: I'm speaking about the
11 preparation of the region.

12 CHAIRMAN SELIN: Somebody who is going to be
13 reviewed?

14 DR. BELLAMY: Yes. Yes.

15 Turning to slide 19.

16 [Slide.]

17 DR. BELLAMY: We found that the exit meetings for
18 the IMPEP are now crisp and clear and the focus is clearly
19 on regional performance. Areas for improvement that are
20 identified are very specific and since they are now focused
21 on performance and safety they are much more readily
22 accepted by the regional staff. We like the vertical slice
23 approach, to look at one technical area from the top to the
24 bottom, and we consider that to be a strength, since it
25 allows the review to highlight key areas, again emphasizing

1 performance in key safety areas.

2 We perceived that the Management Review Board
3 ensures senior management oversight and awareness of
4 regional developments and provides a level of consistency in
5 the review and characterizations.

6 We like the idea now that the IMPEP review reports
7 are received in a timely manner and they were provided to
8 the region for comment prior to finalizing. We also
9 especially appreciate the fact that there are no surprises
10 in the report which results from the meaningful exit
11 meetings that are held.

12 Finally from the regional perspective, the pre-
13 planning of the team that results in a focused review when
14 they are on-site is seen as a significant strength.

15 On slide 20 are listed some issues that --

16 CHAIRMAN SELIN: Just a second.

17 DR. BELLAMY: Sir.

18 CHAIRMAN SELIN: It seems that every one of these
19 conclusions could have been achieved without having a common
20 review if we just had a better review process.

21 Is that correct, Dr. Paperiello, or is there any
22 that is specific to having a common process between
23 Agreement States and the --

24 DR. PAPERIELLO: To be honest, without the IMPEP
25 program we would have done what we did.

1 CHAIRMAN SELIN: Just because we would have done
2 it.

3 DR. PAPERIELLO: Having received Headquarters
4 audits in the past, I wanted to do them the way I thought
5 they ought to be done. They're done with the criteria known
6 well in advance. The regions have operating plans, which
7 the EDO concurs in. We have agency management directives,
8 we have an inspection manual chapter. Everything the
9 regions need to do are out there and that's what we're
10 reviewing them against. They do match the common
11 performance indicators, quality of inspection, timeliness of
12 inspection, qualifications of staff, how you handle events.
13 It's all there. Actually, this year we're going to do
14 everything. All NMSS programs in the region will be covered
15 the same way.

16 CHAIRMAN SELIN: So, even if the Commission turned
17 down the whole concept of common performance indicators, we
18 could still achieve all of the benefits that Mr. Bellamy
19 discussed?

20 DR. PAPERIELLO: Well, I think it's reasonable.
21 It's things you can agree on. Now, when we go to the
22 Agreement States, I think it's negotiable on the
23 quantitative goals and things like that, but at least a
24 concept that you don't go out and then make up your
25 acceptance criteria while you're doing the reviews. It's

1 the same as licensees.

2 DR. BELLAMY: Sir, I think from a regional
3 standpoint the answer to your question is yes, you could
4 achieve those.

5 CHAIRMAN SELIN: Okay.

6 DR. BELLAMY: If I could have slide 20, please.
7 [Slide.]

8 DR. BELLAMY: What slide 20 indicates are some
9 issues that, from a regional perspective, need to be
10 considered in future implementation of the IMPEP program or,
11 for that matter, any assessment of regional performance.
12 First, it has to be recognized that there is a balance to be
13 struck between the standardized questionnaire and our
14 existing management information systems. The regions work
15 daily with the Program Offices and are constantly providing
16 them data and status reports, much of which is then
17 requested in the questionnaire. However, the use of a
18 standardized questionnaire for the regions and the Agreement
19 States necessitates this duplicative effort. There
20 shouldn't be a major impact on regional preparation for an
21 IMPEP review since, as I've already discussed and Mr.
22 Pangburn has, we have in place these automated management
23 information systems that contain much of the requested
24 information. Since we now clearly know in advance what to
25 submit, we can structure our management information systems

1 accordingly. Plus, the existing format of this information
2 was found to be acceptable to the IMPEP team in 1994.

3 Second, the lessons learned from the IMPEP review
4 should be communicated to all regions so that I can use the
5 experience of the other regions to improve my region's
6 performance and it can work vice versa.

7 CHAIRMAN SELIN: You mean not the process of doing
8 the review, but the substantive results of the review?

9 DR. BELLAMY: Yes, correct.

10 And finally, as key safety issues change and
11 emerge, the IMPEP process must be focused on these in order
12 to provide a catalyst for developing still higher
13 performance in the regional staff.

14 In summary, the regions as a whole believe that
15 there have been significant improvements via the IMPEP pilot
16 program in the way program offices formally assess our
17 performance on an annual basis. Noting especially the daily
18 interaction that we have with the program offices, Regions I
19 and II believe that it is now appropriate to conduct this
20 year's assessment simply by responding to the questionnaire
21 without an on-site visit and in the future we look forward
22 to continue to work with the program offices for future
23 improvements.

24 Thank you.

25 CHAIRMAN SELIN: I'm a little confused. Just

1 because you already had on the on-site visits or in the
2 future would there -- are you saying in the future you won't
3 need on-site visits, that answering the questionnaires will
4 be good enough, or just this one time it would be --

5 DR. BELLAMY: The biennial process of having the
6 team come visit us one year and then the next year simply
7 fill out the questionnaire and submit that is entirely
8 acceptable to us.

9 CHAIRMAN SELIN: I see.

10 DR. BELLAMY: On an alternating basis.

11 CHAIRMAN SELIN: I have to admit, Dr. Paperiello,
12 before we did this review I thought we were doing these
13 things already. I mean we were doing the NMSS reviews. So,
14 this is very instructive.

15 Do you want to talk to these folks or do you want
16 to go on?

17 COMMISSIONER ROGERS: I just have one question. I
18 think probably you've really touched on it in a way that
19 indicates it, but you said that you did use non-common
20 indicators as warranted. The question is how important were
21 the non-common indicators in the findings of satisfactory or
22 not and what were the non-common indicators?

23 MR. PANGBURN: In the regions, for example, we
24 used things like progress against operating plan goals, the
25 status of review of decommissioning and financial assurance

1 case work. They didn't figure directly or as directly in
2 the finding of programmatic adequacy in the regions, I would
3 suspect, as in the Agreement States.

4 MS. SCHNEIDER: For the Agreement States, what we
5 did, because we were directed to use the existing policy
6 statement, we took all the other indicators that didn't fall
7 or were related to our five common and for the purpose of
8 the pilot we made those our non-common. So, when we were
9 doing the evaluation and if we found that we had concerns
10 like we did in New Hampshire and Illinois on compatibility
11 of regulations, we made those into a non-common performance
12 indicator for the purpose of the pilot. So, we would factor
13 that into a determination on compatibility for this state
14 and we carried that forth in our recommendation.

15 We had other things like the quality of emergency
16 planning which is again a category 1 indicator, although we
17 do believe in using the common performance indicators,
18 having gone through the pilot. That would be one where if
19 you have trained staff, you have people who are experienced
20 and you know that through accompaniment and they have
21 equipment, we think that you really don't have to go into
22 that like we have been in the past and that one could
23 probably drop out.

24 So, at least for the pilot, what we did is use our
25 30 indicators, everything that wasn't related to the five

1 common, we threw that into the non-common and threw those in
2 to consider when we were doing it. We were probably more --
3 we weren't as -- didn't chase -- well, we were trying to do
4 the root cause analysis in that like we were doing IMPEP in
5 the regions, but we were constrained a little bit with
6 trying to do the reviews according to the existing policy
7 statement.

8 COMMISSIONER ROGERS: Well, for example, if you
9 didn't use the non-common indicators, would you have been
10 able to find programs satisfactory?

11 MS. SCHNEIDER: Yes. I think if we had just used
12 the common performance indicators we would have been able to
13 make a determination on adequacy. The only thing that would
14 be open was the compatibility portion.

15 COMMISSIONER ROGERS: Okay.

16 MS. SCHNEIDER: Okay, for the Agreement States.

17 MR. BANGART: But compatibility was the important
18 thrust of the New Hampshire review.

19 MS. SCHNEIDER: Right.

20 MR. BANGART: We wanted to use IMPEP as a vehicle
21 to do what I call the deep vertical slices in areas that we
22 know historically because of program reviews are our weak
23 areas. We chose and planned ahead of time to delve into the
24 compatibility issue because there was a history over years
25 of slowness in getting regulations in place. So, we learned

1 additional information and together with discussions with
2 New Hampshire, I think, they have taken some action that I
3 think will hopefully address that problem.

4 MS. SCHNEIDER: Yes. We were able to get to a
5 root cause of some of their programs in their regulation
6 promulgation using the IMPEP type process in this non-
7 common performance indicator area.

8 COMMISSIONER ROGERS: All right.

9 MR. BANGART: So it's critically important, can be
10 critically important in some reviews.

11 COMMISSIONER ROGERS: Yes. Right. All right.
12 Thank you.

13 COMMISSIONER de PLANQUE: Just to follow-up on the
14 compatibility issue, for what you're proposing in the
15 interim, until we get our policy statements all
16 organizations, how would you follow-up the compatibility
17 part?

18 MS. SCHNEIDER: We'd use that as a non-common
19 performance indicator for the Agreement States.

20 COMMISSIONER de PLANQUE: Okay. Got it.

21 MR. BANGART: Using the existing procedure.

22 MS. SCHNEIDER: Using the existing procedure.

23 COMMISSIONER de PLANQUE: All right. There was a
24 lot of discussion about the use of the term "marginally
25 satisfactory." This was a term that I think we also

1 requested feedback on on the policy statements that went out
2 for public comment. I believe you discussed in here the
3 possibility of putting in a fourth category.

4 MR. PANGBURN: That's correct.

5 COMMISSIONER de PLANQUE: How does that way get
6 substituting the "needs improvement" for the middle category
7 instead of creating a fourth? Do you really have enough
8 differentiation to have four categories?

9 MR. PANGBURN: Well, I think what we were trying
10 to get to was a middle ground to where you found performance
11 just didn't quite meet satisfactory and yet clearly didn't
12 fall to that category of marginal satisfactory. I guess we
13 were looking at identifying that to say, if you don't quite
14 meet it and there are some very clear corrective actions
15 necessary to get to where you feel comfortable with full
16 satisfactory on the indicator, that's where the program
17 finding would be made.

18 COMMISSIONER de PLANQUE: So, you really see a
19 need for a fourth category?

20 MR. PANGBURN: Yes.

21 COMMISSIONER de PLANQUE: Will this down the road
22 cause problems in differentiating between marginally
23 satisfactory and unsatisfactory or do you think there will
24 be a clear distinction between those two?

25 MS. SCHNEIDER: I think we believe there is a

1 clear distinction. I think you have -- at least in the
2 states you'll have programs where they are performing, they
3 are getting out, getting the inspections, but you see trends
4 there where you can see problems down the road. That's what
5 we were kind of identifying and that was certainly, and I
6 think you'll hear from Illinois, what we were looking at.
7 There's a connotation when you say somebody is marginally
8 sat. and that's not true. They were performing. They were
9 getting out there, but we were identifying some areas of
10 concerns. So, we think that it is a valuable mechanism to
11 use and feel that we'll have problems that we will be able
12 to say are marginally satisfactory or we will be able to
13 differentiate.

14 COMMISSIONER de PLANQUE: Okay. And there'll be a
15 clear distinction between those and the unsatisfactory?

16 MS. SCHNEIDER: We believe so based on some of our
17 experiences in the past with some of the other states, some
18 of the historical problem states we've had.

19 COMMISSIONER de PLANQUE: All right. Thanks.

20 CHAIRMAN SELIN: I assume that when we do the NMSS
21 review of the region we also have things that we as
22 fiduciaries for the resources do that we don't do for the
23 states.

24 DR. PAPERIELLO: That's exactly right.
25 Principally, licensing timeliness. This year we will pick

1 up the inspection program for gaseous diffusion plants, fuel
2 facilities, things like that that you wouldn't have in an
3 Agreement State.

4 CHAIRMAN SELIN: I mean we're doing management
5 reviews also. Are we using the people efficiently and stuff
6 like that, which has nothing to do with either adequacy or
7 --

8 DR. PAPERIELLO: That's exactly right, how are the
9 resources being used that we provided.

10 CHAIRMAN SELIN: Yes, and we're still going to do
11 that when we look at our --

12 MR. PANGBURN: That's correct. And in the two
13 reports we did, we looked at that.

14 CHAIRMAN SELIN: Okay. Thank you.

15 MR. TAYLOR: That concludes our presentation.

16 CHAIRMAN SELIN: Okay. That was very interesting.
17 I want to tell you, I'm not convinced we need another
18 category. It seems to me that satisfactory, needs
19 improvement, unsatisfactory coupled with some trending
20 information might be all that we need. But that's -- I
21 wouldn't say it's a detail. It is an important point, but
22 it's worth thinking about.

23 COMMISSIONER de PLANQUE: May I just answer that?

24 CHAIRMAN SELIN: Please.

25 COMMISSIONER de PLANQUE: In determining whether

1 it's three or four, and if the determination goes with
2 three, I think it's still important to consider what you
3 call that middle category because that's the key item of
4 sensitivity, what the word "marginal" conveys in the public
5 arena compared to what we really mean in terms of the
6 adequacy of the Agreement State.

7 MR. BANGART: Let me just add one additional point
8 that links what is being developed and the umbrella policy
9 as well. One of the benefits of the marginally satisfactory
10 rating being there is that it seems to more logically tie to
11 the concept of a probationary status if we incorporate that
12 into the program.

13 COMMISSIONER de PLANQUE: Yes.

14 MR. BANGART: So, that's one of the reasons that
15 we felt it was necessary to retain it.

16 CHAIRMAN SELIN: Thank you.

17 Remember baseball, when we used to have baseball?
18 Time out in the double header to clear the field and smooth
19 the sand.

20 The Commission is very pleased to welcome the
21 members of the Agreement State Program and we're very
22 grateful for your willingness to participate throughout,
23 today just being the wrap-up of what's been a very large
24 and, from what I've heard from the staff, a very useful
25 effort.

1 Mr. Kerr, you're here as an OAS person, not as an
2 OMI person?

3 MR. KERR: I guess you know I'm not Mr. Ratliff.
4 He had a little accident. When I talked to him, he was
5 waiting to go to the hospital yesterday, either a sprained
6 ankle severely or broken ankle. I'm not sure. So, since I
7 was going to be here, he asked me to substitute for him.

8 CHAIRMAN SELIN: Thank you. Introduce your
9 colleagues.

10 MR. KERR: Sure. On my far left from New
11 Hampshire, Dennis O'Dowd and Bill Sinclair from Utah, and
12 Gordon Appel, the Deputy Director of the Illinois Department
13 of Nuclear Safety.

14 I think the way we'll approach this is to ask
15 these three gentlemen to speak first in the sequence in
16 which the reviews were done, for no other piece of logic,
17 and then I'll make some comments at the end.

18 CHAIRMAN SELIN: Thank you.

19 MR. KERR: Bill first.

20 MR. SINCLAIR: Thank you, Wayne.

21 Good afternoon, Commissioners.

22 CHAIRMAN SELIN: Good afternoon, Mr. Sinclair.

23 MR. SINCLAIR: Glad to be here today.

24 I think I'd like to start off my remarks today by
25 talking about some positive and negative things that we

1 experienced.

2 In your Commission briefing, I think it was
3 indicated that initially I had a pretty negative opinion
4 about the whole process and this kind of changed over time.
5 So, I kind of want to give you how we got there.

6 I think overall, at this point in time, I would
7 say that I would be a supporter of the IMPEP process, that
8 I've been convinced that it's a positive thing. However,
9 when we first started out there were some negatives and let
10 me just point some of those out to you that we experienced.

11 We felt at times during the review process we were
12 being treated like licensees rather than co-regulators. To
13 me that was very disturbing. I think we worked those
14 problems out, but certainly that was a learning curve for
15 both the review team and the state itself. I think that's
16 something you need to be sensitive about in future reviews.

17 We found very quickly that there's a lot of
18 professional judgment in these things, that there can be
19 different opinions about different aspects of a review. So,
20 we have opinion about things and we're very defensive about
21 our program. Your review team would look at things in
22 another sequence, so to speak, and as such we would have
23 professional disagreements. I think that's something that
24 needs to be worked on, is how we get through resolving those
25 professional judgments and I'll talk about that again in

1 just a second.

2 I felt initially that the oral report that we got
3 at the end of the review was very negative. In fact, I
4 think I characterized my staff as being demoralized. After
5 I got their chins up off the floor and we had a chance to
6 talk about it, I think we got away from that. However, I
7 think the thing that concerned us the most was that we did
8 spend a lot of time putting together issues prior to the
9 team coming out that were part of the report that's required
10 that I felt were good issues to be looked at and they
11 weren't looked at at all. I think there were a lot of
12 positive things that we've done as a program that were also
13 not considered.

14 I think this is an important aspect of any review,
15 that we need to emphasize some of the positive things that
16 are going on from either regions or the states so that kind
17 of information can be passed along and we can learn from
18 that.

19 COMMISSIONER de PLANQUE: Are you essentially
20 saying you want to be able to add some things to the agenda?

21 MR. SINCLAIR: I would like to add some things to
22 the agenda during the review. If there are issues that are
23 important to us as a state that may not be in the overall
24 NRC scheme of things important, yes, I would like to have
25 the opportunity to at least discuss those issues. To be

1 fair, Paul Lohaus did spend some time with me individually
2 after the review and we went over several Utah-specific
3 issues, but it wasn't part of the review team process.

4 As has been mentioned, the term "marginally
5 satisfactory" was one term that struck a sour note, so to
6 speak, with us, and mainly because for the performance
7 indicator technical qualify of inspections we initially
8 received a marginally satisfactory rating.

9 The perception there is what really concerns me.
10 There's a perception message there for both the staff that
11 somehow the staff has failed in their job. There's also a
12 perception message for the public that the State of Utah is
13 not performing at a level that they expect them to perform.
14 When that message gets out and is disseminated among
15 politicians, like legislators who really don't understand
16 the process, it can have a very negative impact on the
17 state. Although this related to rad materials, it wasn't
18 clear that it didn't extend to low-level waste and that's
19 another concern of ours.

20 On the other side, on the positive side of things,
21 I like the ability to come forth and defend our program. I
22 like the ability to respond to the report in writing and put
23 our case forward, so to speak. I thought that the Office of
24 State Programs and the review team did a good job in
25 listening, especially after I kind of took them to the wood

1 shed at the All Agreement State Meeting and I thought they
2 did a very good job responding to a lot of our concerns.
3 So, I was very pleased with that.

4 I saw the Management Review Board as an appellate
5 body act with the ability to change the rating to something
6 very positive. Of course, I got a rating changed. That's
7 why I would view it as very positive. But I was pleased
8 that they looked at the issue as a whole rather than looking
9 at a couple of instances and making a judgment on that
10 instance, where they went into more depth and said, "Well,
11 is this a pattern of abuse here?" I think we were able to
12 point out to them that consistently we had done the right
13 thing and, as a result, they changed the rating. I thought
14 that was a very positive step.

15 So, those were some of the positive and negative
16 aspects. Some of the major issues for us remain. Of
17 course, we want to see the rating system changed. I would
18 like the marginally satisfactory rating eliminated. I think
19 perception-wise it's just a bad rating. There also needs to
20 be very clearly how you move from one rating to another.
21 The criteria involved at this point in time, in my mind, are
22 not clear as to how you move from satisfactory to marginally
23 satisfactory to unsatisfactory. If you're interested, I
24 sent in a three-page commentary on that as part of our
25 comments on how I could prove my case either being

1 marginally satisfactory or satisfactory based on the
2 criteria. So, I think that's something that really needs to
3 be looked at closely.

4 COMMISSIONER de PLANQUE: Would you care to
5 comment on the use of three versus four categories?

6 MR. SINCLAIR: I don't have a strong opinion one
7 way or the other. I think three categories is probably
8 better. The less the better, in my view.

9 As part of the overall process, I got some mixed
10 signals as to the recommendations as they came out in the
11 report, whether or not they were actually recommendations or
12 whether or not they were requirements that needed to be
13 responded to. I got different answers from talking to
14 different people. I want to indicate that I appreciate them
15 being recommendations and that we have the ability -- if
16 there's a recommendation we don't agree with, we have the
17 ability to say, "We don't agree with that," and not
18 necessarily implement a recommendation. I think that's
19 important.

20 I think it's important that state priorities are
21 factored into this process, that occasionally there may be a
22 reason why a state didn't get inspections done. Maybe they
23 were responding to an incident. Maybe there was a
24 legislative mandate that the executive director said you
25 would do rather than do something else. I think that needs

1 to be thought of.

2 I like the idea of having states on the review
3 team. I think that's just a great idea and it gives us the
4 ability to work together more closely and head toward the
5 concept of being co-regulators. I also think it's a
6 valuable learning tool for our staff, so they can get the
7 perspective of the other side of the house, so to speak, and
8 see how difficult a job it really is to review a state
9 program.

10 I would also encourage state participation on the
11 Management Review Team. And I certainly understand the
12 problem with FACA, but I would certainly like to see -- if
13 that is changed in the future, I'd like to see the state as
14 a voting member of that body.

15 I think one thing you need to consider is the
16 frequency of reviews and do you really need biennial
17 reviews. Certainly with the amount of time required for
18 these reviews, the number of Agreement States and you,
19 Commissioner, pointed out there's some mathematical problems
20 there, that maybe we need to increase the frequency to three
21 or four years. You can do that, I think, without
22 compromising these program reviews, especially where you
23 have states where you know there's an adequate and
24 compatible program.

25 Finally I'd like to comment on elimination of

1 interim visits by the agency, that during the off years we
2 have what we call visits and sometimes there are reports
3 come out of these visits, sometimes there's not. It's
4 really difficult for the states to know how to respond to
5 those interim visits. To save everybody some time, effort
6 and money, it may be a good idea to eliminate those interim
7 visits.

8 I guess overall I would support the recommendation
9 of Option 2. I do have some concern about making sure that
10 -- being a state with a low-level waste site, I want to make
11 sure that that is included as part of the review process. I
12 don't want to have to deal with two separate review teams
13 coming out doing separate reviews on my program. I would
14 support continuing with the IMPEP process and also trying to
15 resolve these other issues with adequacy and compatibility.

16 I'd really like to thank the Office of State
17 Programs for inviting us to participate in this process.
18 It's been a real valuable experience for us as staff and
19 management. Thank you.

20 CHAIRMAN SELIN: I hate to look a gift horse in
21 the mouth, but Governor Levitt wrote a very nice letter at
22 the end of this which I assume you participated in, but I
23 don't hear the basis for his having written such a nice
24 letter. You see to be, sort of on balance, sort of kind of
25 in favor of the program, nowhere near as enthusiastic as the

1 letter was. So, what am I missing?

2 MR. SINCLAIR: I'm not sure I'm aware of the
3 letter you're talking about, but I am in favor of the
4 program. I would certainly characterize --

5 CHAIRMAN SELIN: He sent us a letter saying this
6 is a really good thing, he wished EPA would use the same
7 program.

8 MR. SINCLAIR: Oh, that's probably the point.

9 CHAIRMAN SELIN: I didn't really want to bring it
10 up.

11 MR. SINCLAIR: Having experience with EPA,
12 Chairman, I can understand Governor Levitt's enthusiasm for
13 your process.

14 CHAIRMAN SELIN: I see.

15 MR. KERR: Do you have other questions for Mr.
16 Sinclair or do you want to go on?

17 CHAIRMAN SELIN: I do have a general question.
18 I'm not quite sure whether these problems later on that you
19 just sort of got used to each other or were they resolved?
20 For instance, we get beaten up by GAO and everybody else all
21 the time. We don't believe that an unfavorable report on
22 some aspect of the NRC program means that we're not carrying
23 out the public health and safety, we just believe that's
24 part of our program that has to be improved. Was it just a
25 question of getting used to that in reviews or did our guys

1 learn things that you thought was valuable?

2 MR. SINCLAIR: Oh, I think it definitely was a
3 learning process on both sides, absolutely. I think there
4 was some valuable exchange. Although we did have
5 professional disagreements, I think we were able to sit down
6 and work those out.

7 CHAIRMAN SELIN: Okay.

8 MR. KERR: Okay. Gordon?

9 MR. APPEL: My name is Gordon Appel. I'm the
10 Deputy Director of the Illinois Department of Nuclear
11 Safety.

12 First, I'd like to offer you the Director's
13 regrets for not being here. He was looking forward to being
14 here, but he did feel it was more important to have the
15 discussion with the legislature about his reconfirmation to
16 the directorship.

17 COMMISSIONER ROGERS: Well, I don't know about
18 that.

19 MR. APPEL: So, thank you for having us here
20 anyway.

21 We are also generally supportive of the IMPEP
22 process. So, maybe that comes as a surprise from some of
23 the discussion we had earlier with the Management Review
24 Board, but I think that this process was an improvement over
25 the previous reviews. I think it did focus on performance

1 and even though we had significant argument over one
2 particular element in the review, I think general the
3 program was a considerable improvement over previous
4 reviews.

5 Largely I think I agree with most of the remarks
6 of Mr. Sinclair, but there are some things that, at least
7 from our perspective I think are more important to us. The
8 rating system does need to be fixed. I probably am maybe --
9 I don't know, I didn't hear a lot of Mr. Sinclair's comments
10 during the review process about marginally satisfactory.
11 That has a terribly negative connotation. I also agree with
12 him that I think three is enough. So, substitute the new
13 jargon for the old jargon, I think is a solution to that
14 matter because I think that the use of that term,
15 "marginally satisfactory," would have left the citizenry of
16 Illinois with the impression that a few more screw-ups on
17 behalf of the department and they will no longer be
18 protecting the public health and safety of the citizenry of
19 Illinois. That wasn't the case, clearly isn't the case, and
20 I don't think anybody was telling us that was the case
21 during the whole review. But that's the impression that
22 would have been left with them, clearly, with the people.

23 I think that it's important for these reviews to
24 include the Agreement States officer for the region. Ours
25 did not. I think it would have helped a lot if it had

1 included him more in the preparation for the review and the
2 conduct of the review, as well as -- I mean in the end many
3 of the things that he brought to the attention of the
4 reviewers and the Management Review Board helped resolve
5 some issues that had been identified in the review relative
6 to the conduct of inspections and stuff like that because he
7 has been out accompanying our people on inspections and I
8 think his insight was a valuable one and could have been
9 more useful to the team.

10 I would suggest that these teams be conducted with
11 a consistent core of people. I'm sure that's a difficult
12 thing to do, especially considering the number of reviews
13 you need to do. I think maintaining some consistency in the
14 personnel of the teams that does the review is very
15 important to maintaining the consistency.

16 I also believe that before the review team that
17 goes out to the states goes there, they should maybe get a
18 lecture on accepting the fact that there are some things
19 that can be accomplished more than one way. They can be
20 accomplished NRC's way and they can be accomplished very
21 adequately somebody else's way. Many of the things that we
22 discussed as part of the review were a matter of, "Well, we
23 don't do it that way." Well, so what? Our accomplishments
24 are meeting the same goals in the end.

25 COMMISSIONER ROGERS: Just on that point, it seems

1 to me that if that's a problem in this, then it seems to me
2 that our performance indicators are not really performance
3 indicators, they're really process indicators and that
4 that's something that we are trying to get away from in
5 general in our regulatory practice, to go more towards
6 outcomes and less towards process. If you see that, and I
7 think that's something I'd like to hear from the other
8 members here as well as to whether those 30 performance
9 indicators that were used or any others that were used would
10 really relate to process rather than outcome, because it's
11 the outcome that we're supposedly focusing on.

12 MR. APPEL: I think in general they're designed to
13 address the outcome. I think people have a natural tendency
14 to try and relate a measurement of performance to their own
15 experience and how that's accomplished. I think they tend
16 to lose sight on occasion that there's more than one way to
17 do that. I don't think in the end we ended up with any big
18 issues that were unresolved that fell in that category. I
19 think maybe one, related to emergency planning requirements.

20 But in the end, I think that the way those things
21 were resolved, and they were resolved both in our
22 discussions with the staff in Illinois and in discussions
23 with the MRB were the result of people recognizing that the
24 intent here was to look at the performance as opposed to
25 just simply the process and the counting of numbers.

1 Chairman, I recognize your desire to have some
2 readily comparable basis in numbers to use to measure things
3 nationally. I think we have to be very cautious in knowing
4 what that number represents. When everyone sees a one in
5 one column and a 12 in another column, they could be two
6 entirely different things. I'm not sure I have a real
7 positive suggestion on how to deal with that, but I would
8 urge you to exercise great caution in that area.

9 CHAIRMAN SELIN: Well, you know, just to hold out
10 a carrot while we're at it, if we find that some performance
11 measure that we have turns out that nationwide we're doing
12 quite well and that there isn't a gross difference between
13 Agreement States and NRC licenses, that might be just
14 something that we pay a lot less attention to. Each state
15 is just a very small universe and if we can look at trends
16 across sets of states, both differences between our
17 licensees and the Agreement State licensees in overall
18 performance, we should be able to feedback into a better
19 process.

20 MR. APPEL: Well, I have the recent experience or
21 relatively recent experience of our issue on inspections
22 being largely based in a numbers game. It's not only the
23 way you count whether or not they're done, but how you then
24 calculate the percentage relative to outstanding ones of the
25 total number of licensees or how you approach that. When

1 the number ends up on a piece of paper in the end and you
2 say there's a distinction between this state and this state
3 or this region and this region or state and it's based on
4 this number, no one really looks past that observation.

5 CHAIRMAN SELIN: I'm not interested in comparing
6 states based on inspections or comparing states based on
7 normal events and output measures. The process measures are
8 just for that state. I see no benefit in comparing states
9 one to another on inspections unless we're going to change
10 the overall standard based on those. We should understand
11 what the inspections are and how you're doing against the
12 national standard, as well as your own standards. I agree
13 with you.

14 MR. APPEL: The one area that my perspective
15 differs from Mr. Sinclair's is we're not inclined to
16 participate in NRC's review of other Agreement States or of
17 NRC's review of its own regions, for that matter.

18 COMMISSIONER de PLANQUE: Would you care to say
19 why? You just don't like us or you can't afford the
20 manpower?

21 MR. APPEL: Actually, it's not a matter of liking
22 or disliking, it's a matter of -- to us there are two
23 reasons. One is a general resource reason. We expend
24 enough resources preparing and dealing with your all's
25 reviews. We don't need to then go out and be part of those

1 as well, which would add to the burden. The second part is
2 the one of general sensitivity. In Illinois we would not
3 really care to be viewed as being the overseer or regulator
4 of some other state's operation. That's their operation.
5 We spend a lot of time telling everybody that Illinois'
6 operation is Illinois' operation, thank you very much, and I
7 think participation in those reviews would be contrary to
8 that view.

9 COMMISSIONER ROGERS: Well, therefore, you would
10 not see as a virtue a kind of self-regulatory function of
11 the Agreement States or self-assessment. Not regulatory,
12 but self-assessment.

13 MR. APPEL: Well, that's a self-assessment.
14 That's different from the review by the body that could
15 influence our Agreement State status overall.

16 COMMISSIONER ROGERS: Suppose NRC weren't
17 involved. Would you be in favor of say all the Agreement
18 States somehow or other putting teams together to look at
19 each other's programs and see whether they could benefit
20 from mutual criticism?

21 MR. APPEL: We might consider that, I think.

22 CHAIRMAN SELIN: Well, it comes up with
23 accelerators. There are radiation protection things in
24 which the NRC doesn't play a role. But what about the other
25 side of the coin? Would you not welcome other states being

1 --

2 MR. APPEL: No.

3 CHAIRMAN SELIN: -- considering the Illinois
4 program?

5 MR. APPEL: No, I don't think we would take that
6 position.

7 CHAIRMAN SELIN: You wouldn't care?

8 MR. APPEL: No, we wouldn't care. We would just
9 view them as another NRC review member.

10 CHAIRMAN SELIN: Another turncoat. Okay. Fair
11 enough.

12 MR. APPEL: And I think you should give strong
13 consideration to extending the period of time between the
14 reviews. Since we so graciously volunteered to participate
15 in IMPEP and the regular review, from our perspective if you
16 were to extend the time period, that means we wouldn't see
17 you until 2000.

18 CHAIRMAN SELIN: Mr. Appel, could I ask you a
19 question on the same line?

20 MR. APPEL: Yes.

21 CHAIRMAN SELIN: Have you thought about -- one way
22 is just to say we'll do triennial instead of biennial, but I
23 doubt very much we're going to do that. The second would be
24 somehow that the frequency of the reviews would be based on
25 the results of past reviews. Have you thought a little bit

1 about how that might be translated into some kind of a rule?
2 I don't mean a regulation, I mean just an algorithm.

3 MR. APPEL: No, I haven't. It's an appealing idea
4 though to say based on the results here that you'd be given
5 a greater period of time to go without --

6 CHAIRMAN SELIN: I should warn you that I'm also
7 intrigued with the idea that in some cases that the actual
8 visit be, say, every three years, but that would put more
9 weight and not less weight on what was done between years
10 and Mr. Sinclair objected, if I heard him correctly. He's
11 not so much saying the visits are so bad, but unplanned,
12 unscheduled, undisciplined, unpredicted visits are not very
13 good. But if we did go to a case where, say, a state --
14 just thinking out loud, a state that was both adequate and
15 compatible and had been so for awhile got a real review only
16 every three years, we'd have to put more weight on what
17 happened between the years to make sure that we really
18 weren't missing some broad indicator of trouble.

19 COMMISSIONER ROGERS: Some trend.

20 MR. APPEL: Yes.

21 CHAIRMAN SELIN: I'm sorry. Did I cut you off?

22 MR. APPEL: I'm thinking about what you said. We
23 were a little bit surprised actually to see the staff
24 recommending to drop the interim review, if you will, the
25 annual one between the biennial.

1 CHAIRMAN SELIN: The other year, the off year.

2 MR. APPEL: The other year, the off year review.

3 I think it probably warrants having some review, some less
4 than full blown review maybe based on what has been
5 identified as needing work in the previous one if you're
6 going to extend the period. That makes good sense to us.

7 The last thing I think I'd like to say is I think
8 that, in our view, we like recommendation 3 of the staff,
9 which is the --

10 CHAIRMAN SELIN: The third option.

11 MR. APPEL: Yes, the third option, to implement
12 IMPEP now across the board for Agreement States and regions,
13 include sealed source devices, mills and low-level waste for
14 both Agreement States and regions, recognizing that low-
15 level waste --

16 CHAIRMAN SELIN: Just cut the cord and make the
17 full transition.

18 MR. APPEL: Do it, yes, sir. That's about all I
19 have say. Thank you.

20 MR. KERR: Other questions?

21 Okay, Dennis?

22 MR. O'DOWD: First of all, thank you on behalf of
23 New Hampshire's Division of Public Health Service's Bureau
24 of Radiological Health for giving us this opportunity to
25 provide further input into the IMPEP program.

1 I'll start by offering some general comments
2 summarizing statements made earlier at the All Agreement
3 State Meeting that was held in October and at the Management
4 Review Board meeting for New Hampshire. Then I'll relate
5 our comments regarding the Commission paper, SECY-95-047.

6 In general, the Bureau staff supports IMPEP. The
7 fact that the overall performance of New Hampshire's program
8 was judged as satisfactory for each of the common
9 performance indicators and found to be adequate under the
10 current review criteria offers credibility to IMPEP. The
11 program appears to be a viable system for review of an
12 Agreement State program. Furthermore, the pilot IMPEP
13 appeared to provide a mechanism which recognized perhaps to
14 a better degree than the current review program elements of
15 a radioactive materials program which are truly essential in
16 providing for the protection of health and safety of members
17 of the public, workers, and the environment.

18 IMPEP provided our agency with many worthwhile
19 recommendations, both informal and formal, which have
20 provided and will continue to provide a basis for making
21 improvements to our radioactive materials program. These,
22 in turn, will assist us in ensuring the public health and
23 safety.

24 In our assessment, the review team approach is an
25 improvement over the practice of having one individual

1 reviewer. We caution that it is imperative that the review
2 team members communicate frequently with each other during
3 the review so as not to create situations in which the same
4 information is repeatedly sought. More importantly, this
5 sharing of information is necessary so that the assessment
6 of the program as a whole is not lost in the detailed
7 analysis. To that end, the team whose make-up consists of
8 reviewers from a selected pool of trained and experienced
9 individuals would offer consistency and quality to the site
10 review process.

11 CHAIRMAN SELIN: Is this more of a future
12 preemptive or did you find this a problem with the
13 current --

14 MR. O'DOWD: I anticipated you were going to ask
15 that. No, it didn't seem to happen. I don't believe that
16 that was the case, but it's such an obvious pitfall that I
17 thought I'd bring it to your attention.

18 CHAIRMAN SELIN: Thank you.

19 MR. O'DOWD: As stated in earlier comments, a
20 noticeable improvement in the process was a timely receipt
21 of the review report both as a draft review for factual
22 correctness and as the final draft report to the Management
23 Review Board. Several comments have already been made to
24 the Office of State Programs and the Management Review Board
25 regarding specific areas for improvement which should be

1 considered in future site review reports. One bears
2 repeating because of its importance for a relatively small
3 Agreement State program such as New Hampshire's. There is a
4 need for the Nuclear Regulatory Commission to continue to
5 improve the review process to better consider the
6 disparities and resources between the larger state programs
7 and the smaller programs. This must be done in recognition
8 that smaller agreement state programs can be run effectively
9 and in such a manner to adequately assure the public's health
10 and safety.

11 CHAIRMAN SELIN: So you're not asking for softer
12 standards, you're saying that we should recognize that we
13 should have output standards, not input standards because a
14 small state can make due with what might on the face of it
15 look like smaller resources than a large state?

16 MR. O'DOWD: Exactly.

17 In the area of rulemaking in particular, but also
18 including incident response and other resource intensive
19 areas, the percentage of a program's actual dedicated staff
20 and/or staff time must be carefully considered and weighed,
21 whereas the larger program may devote only a small
22 percentage of its total staff to performing a particular
23 task, for example rule revision. A smaller program
24 invariably apportions a much larger percent of available
25 staff resources to performing that same task.

1 Therefore, the goal of the review needs to stay
2 focused on the overall program's effectiveness and
3 evaluating that. The team, in its evaluation and
4 recommendation, needs to keep the size and scope of the
5 program in perspective. Consideration should include the
6 categories and total numbers of licensees within the
7 jurisdiction, the quality of that program's licensing
8 policies and practices, the nature and frequency of
9 communications between the agency and the regulated
10 community, and even the physical proximity of that agency to
11 its licensees.

12 I'd like to now direct my comments to the
13 Commission paper, staff analysis and recommendations on
14 IMPEP. I'll preface my remarks by stating that our
15 assessment of the staff's statements in their analysis paper
16 is at this time preliminary. It was only a very short
17 period of time that we had to review it. Our comments are
18 presented point by point to the approaches and options
19 presented in the paper and we hope that you consider these
20 comments in your decision making along with the
21 recommendations of your staff.

22 We are in favor of the NRC staff position of
23 including the five regional Agreement State officers into
24 the pool of personnel to conduct program reviews, along with
25 selected OSP, NMSS and regional staffs. Furthermore, we

1 strongly recommend that this pool include Agreement State
2 personnel. There seems to be some indication in the SECY
3 paper that there will be eventual discontinuance of regional
4 state agreements officers. If our interpretation of this
5 point is correct, we are certain that this would be an area
6 of concern for many of the Agreement States.

7 The paper also appears to suggest that eventually
8 a single organization, perhaps NMSS, will be assigned
9 exclusive responsibility for reviewing both the Agreement
10 States and the regional programs. We can understand the
11 difficulties inherent in the joint effort by NMSS and OSP in
12 terms of coordination across organization lines.
13 Nonetheless, it is of extreme importance to the states that
14 OSP perspective not be lost or OSP reduced to subordinate
15 status in its participation in this program.

16 CHAIRMAN SELIN: Let me just answer. The thing
17 we're most concerned about is just the direct opposite, that
18 the things that we learn from the Agreement State
19 experiments -- remember, two-thirds of the licensees are
20 Agreement State licensees and yet in terms of how we make
21 policy within the NRC, NMSS is far more heavily represented
22 than the people who get the feedback from the Agreement
23 State. We are concerned that in the current structure -- we
24 have a very senior person running our Agreement State
25 Program at present and his status makes up for a lot of

1 this, but structurally the information that comes in from
2 the Agreement States just doesn't get the same -- it doesn't
3 have the same organizational help to get the same attention
4 as that which comes in from NMSS does.

5 Our concern is really quite the opposite of the
6 one -- we're not trying to think about downgrading the
7 Agreement States, but making sure that not just the
8 political stuff, which is really what you're talking about,
9 but the substantive experience that we learned from the
10 Agreement States gets full weight when we try to make any
11 kinds of technical decisions.

12 MR. O'DOWD: Continuing with the approaches and
13 options as presented, we agree with the staff recommendation
14 of establishing an Agreement State liaison to the MRB. It's
15 unfortunate, however, that the constraints of FACA may
16 prohibit full participation by that member such as voting on
17 matters before the MRB.

18 The paper offers four approaches for Agreement
19 State participation on the review teams. We support the
20 fourth, that of having the cadre of Agreement State
21 personnel trained and qualified to participate as IMPEP
22 review team members. However, we suggest further that ten
23 individuals from Agreement States be considered only a
24 minimum number and that the pool optimally consist of as
25 many as 20 or more Agreement State members.

1 CHAIRMAN SELIN: Would you find -- I mean this is
2 a little hypothetical, but the kind of training we're
3 talking about, would that be of use to the people in doing
4 their main job as opposed to just in helping carrying out
5 this overall job?

6 MR. O'DOWD: That's correct, and I suggest that
7 this training or cross-training component be emphasized.
8 Participation in these reviews by individuals from Agreement
9 States can be considered cross-training. I know that's a
10 belief that our state has, and that this information can be
11 brought back to the program to initiate further
12 improvements. In fact, to quote a section from the SECY
13 paper, there was a quote, I'll quote it, "The team also
14 brought back useful information as a result of visits to the
15 Agreement States in terms of innovative program tools.
16 Examples included comprehensive licensing inspection
17 databases and the use of customer satisfaction forms to gain
18 feedback from licensees on inspector performances."

19 So even the review team, your review teams have
20 found that there is information out there that can be shared
21 with other states.

22 CHAIRMAN SELIN: Absolutely.

23 MR. O'DOWD: Probably even with the other regions
24 if it's not across the board.

25 In so far as the resource difficulties discussed

1 in the paper affect the states, we offer the following.

2 Option A, which is transfer of FTEs, we don't take
3 any position at all.

4 On option B, use of contractors, we question if
5 individuals with suitable backgrounds can be obtained.

6 CHAIRMAN SELIN: I don't think the Commission
7 would like that, because we don't want to invest all that
8 experience in people that don't have a commitment to us over
9 the long run.

10 MR. O'DOWD: Option C, which is changing the
11 frequencies of reviews, I don't think should be discounted.
12 If a state is adequate and compatible, why not defer the
13 review cycle to every three or four years?

14 Option D, which is Agreement State participation,
15 we obviously support this.

16 Option E, alternative team composition, we
17 question this option as it appears to compromise the intent
18 that the programs be treated equally. We concur with the
19 staff assessment that by changing the ratio of NMSS and OSP
20 members the benefits of interoffice teams contained in the
21 IMPEP approach would be significantly diminished.

22 The next items are with regard to two issues,
23 common performance indicator called "status on materials
24 inspection program" and the three performance levels for
25 each indicator.

1 We agree that the indicator on status of materials
2 inspection programs should be modified to be less
3 prescriptive. We support the staff proposal to revise the
4 name and criteria of this indicator. This includes a less
5 quantitative assessment of inspection being performed that
6 would better reflect the different approaches to inspection
7 planning in the Agreement States.

8 With regard to the performance levels, we propose
9 the elimination of the performance level called "marginally
10 satisfactory." It does not appear to have much meaning and
11 has a negative connotation to it. Instead, substitute the
12 term "satisfactory with corrections needed" or "satisfactory
13 with recommendations for improvements" as this would
14 encompass a broader area in which to categorize performance
15 of an indicator between the levels of satisfactory and
16 unsatisfactory.

17 Finally, with regard to the various options
18 presented for IMPEP's implementation, we offer the
19 following.

20 We are not in favor of any of the options in the
21 SECY paper, particularly options 1 and 4, however option 2
22 which implements IMPEP on an interim basis is the closest to
23 our own suggestion which is as follows.

24 We suggest that IMPEP be implemented in all, not
25 half of the regions in Agreement States at the same time,

1 whenever that is, and review non-common performance
2 indicators separately using criteria developed in close
3 cooperation with the Agreement States.

4 This concludes my remarks and I would like to
5 thank you for giving us this opportunity to comment.

6 CHAIRMAN SELIN: Option 2 and option 3 differ in
7 two ways. Two is gradual and 3 is immediate. Two is the
8 minor, the smaller set. Three is the larger set. You would
9 like to see all at once implementation, but the smaller set
10 of common indicators?

11 MR. O'DOWD: That's correct.

12 CHAIRMAN SELIN: Okay.

13 MR. KERR: Other comments?

14 CHAIRMAN SELIN: Well, that was a very well-
15 prepared presentation, very helpful. You actually read the
16 SECY before you prepared your remarks, a precedent that's
17 very dangerous for our own staff.

18 MR. O'DOWD: Thank you.

19 CHAIRMAN SELIN: Very, very nice job.

20 CHAIRMAN SELIN: Commissioner?

21 COMMISSIONER de PLANQUE: I'd just like to know if
22 Mr. Sinclair or Mr. Appel want to say anything relative to
23 what the previous state speaker said, because you didn't
24 have a chance to comment if you went ahead of somebody else.
25 Did you want to add anything?

1 MR. APPEL: No, I don't think we're largely in
2 disagreement on very many things at all. They would like to
3 see a lesser program implemented at some near point, but --

4 COMMISSIONER de PLANQUE: Sure. I just wanted to
5 know if you had anything additional you wanted to say.

6 MR. SINCLAIR: Yes. I just wanted to make sure --
7 I don't know if it came across, but I'm also very supportive
8 of the concept of having the regional agreements officer as
9 part of the process. We didn't have that as part of our
10 review team and I think it was unfortunate.

11 CHAIRMAN SELIN: Mr. Kerr, I have some questions
12 for you before you make your --

13 MR. KERR: Oh, sure.

14 CHAIRMAN SELIN: You might cover those in the
15 questions or what-have-you.

16 Number one is, does the organization plan to take
17 up both the desirability and the timing of this IMPEP
18 program at its next meeting?

19 MR. KERR: Maybe before, I hope.

20 CHAIRMAN SELIN: Okay. The second related
21 question is, is there -- from the Agreement States' point of
22 view, is there any benefit in not just going from the old
23 program to the new program once the new program is discussed
24 and polished a little bit and you've had a chance to see
25 what it is? Is there any benefit in a gradual cut-over?

1 MR. KERR: No. I think what you'll see from my
2 comments is that I can't give you much of a consensus today,
3 so I really don't know. But from what you've heard so far
4 and from what I'll tell you about three other states, why, I
5 think, if there is any consensus so far, it's to go ahead
6 and not, you know, continue with the old system.

7 CHAIRMAN SELIN: Okay.

8 MR. KERR: Let me first say that I think kind of a
9 major comment was that the states did not have adequate time
10 to review this paper. We got it Friday. Obviously the
11 three of us read it and prepared for it because we were
12 going to appear here, but, because of its importance, it
13 should allow more time for comment and I suggest -- you
14 know, I'll try to get Mr. Ratliff on board to go to March
15 31st and to try and get either consolidated comments or to
16 tell Agreement States to get their comments in directly.

17 So, like I say, my comments can't really be
18 considered a consensus or maybe even a representative
19 sample. I'm not sure. You've heard these three people's
20 views and I reviewed the comments of three other states,
21 Colorado, Louisiana and Kansas, so at most we have six and
22 you'll see that they have differing views and I'm not going
23 to try and embellish them or compare them to the others, but
24 I thought it would be useful to run through a few of what
25 each of them have said.

1 Colorado basically supports the concept of the
2 IMPEP review. They think more flexibility should be built-
3 in handling incidents, a la Illinois' experience. It's
4 essentially the same issue.

5 Colorado does not feel you should assign a single
6 organization for review and they added they felt the MRB
7 should have a mix that includes the regions on the MRB.
8 They concur with the Agreement State liaison to the MRB
9 also. They believe the predominant staff on lead should be
10 OSP. I guess that's mostly based on the number of Agreement
11 States and the size of the programs that all 29 of us have
12 collectively. They oppose the use of contractors also and
13 they recommend that you include the mills, low-level waste,
14 and the sealed sources and devices in the program as common
15 in the NRC program.

16 Louisiana generally agrees with the concept. They
17 agree that the marginally satisfactory needs some change,
18 which it appears staff was recommending and other suggest.
19 They agree with the unified review organization which is in
20 the paper.

21 Louisiana does oppose a liaison to the MRB based
22 on time constraints, as near as I can tell from what they
23 said in their letter. They do not object to the use of
24 contractors if they were properly qualified. They favor the
25 option 2 on implementation which is in 1995 the interim in

1 the two regions and 10 to 13 Agreement States using the five
2 common indicators.

3 Kansas commented I guess I would characterize as
4 generally negative comments. They indicated that it appears
5 to be micro-management of states which results in some
6 expensive aspects to it. They would like to continue the
7 off-year informal reviews and they don't particularly want
8 the reviews reduced. They do suggest that the reviews could
9 be less threatening. I'm not quite sure how to interpret
10 that at the moment, but that's the words they used.

11 They put in a plug for the training program as
12 very good and indicate that this serves to go a long way to
13 keeping things compatible. I mean, I realize and I think
14 they do that compatibility is a sensitive issue, but, if
15 there's anything that perhaps supports keeping things on
16 somewhat of an even keel, the training program is
17 instrumental. At least, that's what they indicated. They
18 feel that the issue is not that the NRC might have a threat
19 of some penalty to encourage us to operate successfully, but
20 which elements really need to be there to be both efficient
21 and effective.

22 Now, if I can draw any conclusions at all out of
23 this, it would be, I think, to proceed with the IMPEP with
24 some changes which you've heard a variety of views. There
25 is certainly some support for the Agreement State liaison to

1 the MRB, all except I think Louisiana. On the contractors,
2 I think it's unanimous not to use those. I think there's
3 uncertainty about participation on the review teams. You
4 heard Gordon say that Illinois didn't feel they could
5 participate. These two gentlemen I think see no problem.
6 We don't know about the others for sure.

7 The fixes on the rating system that were proposed
8 in the paper I think seem to be appropriate in one way or
9 another with perhaps some modification. The use of the
10 regional state agreement officers, I think everybody is
11 unanimous on that, that they can provide valuable input and
12 assistance.

13 And finally, I think there's always the thought
14 that you maintain flexibility in the application of this or
15 any other program that you have with us, that that is
16 important, that there are things that cannot be too rigid.

17 That's basically the comments I got, and, like I
18 say, I'm not sure it represents a consensus at all but it's
19 some indication of at least three more states.

20 CHAIRMAN SELIN: Commissioner Rogers?

21 COMMISSIONER ROGERS: Well, just that I think this
22 has been very helpful and I really thank all of you for
23 participating and also being with us to share your thoughts
24 on this matter.

25 It does seem to me that the process has been a

1 positive one in dealing with the concerns that you've always
2 had that you weren't really being treated as partners in a
3 sense but really something else, sort of more like
4 licensees, and I take it that this process so far has really
5 gone quite a ways towards changing your perceptions of that
6 and changing how NRC acts towards you. That by itself, it
7 seems to me, is a very good reason to consider this same
8 type of IMPEP process because that's been a thorny issue
9 that just has been around for a long time. I know you've
10 expressed considerable unhappiness over it and maybe this is
11 one way that we can sort of break that down and find a way
12 to make our relationship one which you feel is
13 professionally equivalent to NRC in some sense. I think
14 that's very important.

15 MR. KERR: Thank you.

16 CHAIRMAN SELIN: Commissioner de Planque?

17 COMMISSIONER de PLANQUE: I would basically agree
18 with what Commissioner Rogers just said and I very much
19 appreciate your taking time to come today and share your
20 views on this process with us. It's extremely important and
21 we appreciate it.

22 CHAIRMAN SELIN: Ditto, but I'd like to actually
23 go a little bit of a step further. I really do appreciate
24 this. I appreciate the mutual -- I want to call it a
25 learning process. We've had to change the relationship in

1 the past. I think we're onto a solid relationship. The
2 communications seem to be much better.

3 We had viewed the Office of State Programs as a
4 kind of a customer service organization with all the
5 substantive decisions coming out of NMSS and they never had
6 to face the Agreement States so State Programs had to sort
7 of sell things. We're trying to look at these as two
8 substantively oriented organizations that have a lot to
9 exchange and to basically lead to a program which from the
10 point of view not of the licensees but of the general public
11 is not more uniform but has comparable results.

12 When the staff is finished and the Commission
13 gives some response to the staff on this program, when we're
14 done with the overall policy statement, we would like to
15 invite the Agreement States Office to comment on the whole
16 set of changes. I mean, the piecemeal changes are important
17 because we have to get them right in detail from the bottom
18 up, but we'd also like to get your views or the
19 organization's views with some time to comment on the set of
20 major changes.

21 We've heard from you twice very recently. It's
22 not a coincidence that there's so much communication at the
23 Commission level as well as at the staff level, which is one
24 of the most important things that's going on in our agency
25 and I hope in your agencies at this point. So, thank you

1 very much.

2 MR. KERR: Well, we certainly thank you for the
3 opportunity to be here.

4 [Whereupon, at 3:41 p.m., the above-entitled
5 matter was concluded.]

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CERTIFICATE

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

TITLE OF MEETING: BRIEFING ON PERFORMANCE INDICATORS IN
MATERIALS PERFORMANCE EVALUATION
PROGRAM - PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Thursday, March 9, 1995

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

Transcriber: Carol Lynch

Reporter: Peter Lynch



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Nuclear Regulatory Commission*

**RESULTS OF STAFF'S USE OF COMMON
PERFORMANCE INDICATORS & PILOT
INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM (IMPEP)**

**George Pangburn, NMSS
Kathleen Schneider, OSP**

March 9, 1995



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Nuclear Regulatory Commission*

BACKGROUND

- o Until 1993, reviews of regional nuclear materials programs and Agreement States were independent, using different performance measures.**
- o Differences resulted from the differing relationships between NMSS to 4-5 Regions, and OSP to 29 States.**
- o GAO found, & NRC agreed, that a more uniform review approach was needed to assess national performance.**



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STAFF REQUIREMENTS MEMO DATED 3/16/94

- o Approved modified pilot IMPEP.**
- o Approved IMPEP approach & indicators in Regions, but directed use of existing 30 indicators along with the 5 IMPEP indicators in Agreement States.**
- o Posed questions to Management Review Board (MRB).**
- o Directed staff to inform Commission of pilot results.**



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IMPEP PILOT PROGRAM

- o Reviewed 2 volunteer Regions & 3 Agreement States between March and August, 1994.**
- o Used five common performance indicators:**
 - Status of Materials Inspection Program**
 - Technical Staffing and Training**
 - Technical Quality of Licensing Actions**
 - Technical Quality of Inspections**
 - Response to Incidents and Allegations**
- o Non-common indicators used as warranted**



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IMPEP PILOT PROGRAM (continued)

- o Based findings upon:**
 - results from questionnaire**
 - technical review of files**
 - accompaniments of inspectors**
 - interviews with staff and management**

- o Held formal entrance & exit briefings.**

- o Dispatched draft reports for comment.**

- o Presented proposed final reports to MRB.**

- o Met with MRB to discuss findings, allow Region/State views to be heard, revise reports if necessary.**



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DIFFERENCES BETWEEN IMPEP & PAST REVIEWS

- o Provided greater structure & technical emphasis in Regional reviews.**
- o Increased emphasis on performance in Agreement State reviews**
- o Gave States opportunity to comment on drafts.**



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**DIFFERENCES BETWEEN IMPEP & PAST REVIEWS
(Continued)**

- o Afforded more flexibility to team members to identify root causes of program weaknesses than traditional Agreement State review.**
- o Added senior-level review, more program visibility, and an appeal protocol thru MRB.**
- o Used inter-office inter-disciplinary teams.**



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GENERAL RESULTS OF PILOT PROGRAM

- o For Agreement States, final IMPEP findings not significantly different from those using existing indicators.**
- o Indicators useful and viable, but changes in terminology necessary.**
- o Inter-office, inter-disciplinary teams effective.**
- o Issuance of draft reports and Regional/State presence at MRB meetings valuable.**



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SPECIFIC RESULTS OF PILOT PROGRAM

- o **Team & MRB agreed: RI, RII, & New Hampshire--
"Satisfactory".**
- o **Utah & Illinois MRB meetings resulted in reassessment
of team's initial findings, with all indicators being
"Satisfactory".**



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OPERATIONAL DATA

- o As part of pilot program, collected data, in accordance with SRM, on:**
 - misadministrations**
 - overexposure events**
 - loss of control of sources/devices**
 - contamination events**
 - contaminated sites (SDMP).**
- o Using data for assessments of individual Regions and Agreement States not recommended.**
- o Data should be collected and analyzed over time to identify trends in the national materials program.**



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STAFFING AND RESOURCES

- o Pilot required 4-5 individuals (4 weeks for members, 5 weeks for team leader).**
- o Pilot used staff from NMSS, OSP, Regional State Agreement Officers (supplemented by others as needed).**
- o Full program would require about 15 reviews/year, with projected cost about 8 FTE.**
- o Agreement State participation could enhance IMPEP process & offset some NRC costs.**



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RESOURCE OPTIONS

- o Option A: Transfer FTE from another office.**
- o Option B: Use contractors to augment teams.**
- o Option C: Reduce frequency of reviews.**
- o Option D: Include Agreement States on review teams.**
- o Option E: Alter team composition.**
- o Recommendation: Use combination of Options A-D**



OPTIONS FOR AGREEMENT STATE PARTICIPATION

For Review Teams

- o No participation.**
- o Use of Inter-governmental Personnel Agreements (IPA).**
- o Have a third-party (i.e., CRCPD) conduct reviews.**
- o Identify cadre of 5-10 Agreement State personnel (Staff's recommended option).**



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OPTIONS FOR AGREEMENT STATE PARTICIPATION

(Continued)

For MRB

- o Non-voting liaison to participate in MRB meetings**



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IMPLEMENTATION QUESTIONS

- o How might changes to Agreement State draft policy statements impact criteria?**
- o Should staff assess Agreement State program functions currently conducted in NMSS and, if so, how?**
 - Low-level waste (LLW)**
 - Uranium mill regulation**
 - Sealed source and device reviews.**
- o How should staff address other Category I indicators not relevant to regions, e.g. legal authority & compatibility of regulations, quality of emergency preparedness?**



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IMPLEMENTATION OPTIONS

- o Option 1: Delay until Agreement State policy statements and implementing procedures are complete.**
- o Option 2: Implement on interim basis in 2 Regions and 10-13 Agreement States. Use five common performance indicators. LLW, uranium mills and sealed source and device (SS&D) programs as non-common indicators.**
- o Option 3: Same as Option 2, but incorporate LLW, uranium mill and SS&D programs, as applicable, to Agreement State common indicators.**



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**IMPLEMENTATION OPTIONS
(Continued)**

- o **Option 4: Adopt some IMPEP methodology, but retain separate sets of indicators for regions and States.**
- o **Staff's recommendation: Option 2**



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**STRENGTHS
(Continued)**

- o Exit meeting meetings crisp and clear, focused on performance**
- o Vertical slice review allows focus on key activities**
- o MRB review provides senior management oversight; improves consistency**
- o Review reports issued timely**
- o Pre-planning by team results in focused onsite review**



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STRENGTHS

- o Review areas and review criteria consistent year-to-year**
- o Review criteria focused on overall performance**
- o Existing management information systems contain much of questionnaire information**
- o Preparation much less resource intensive than past reviews and can be done by mid-level management**



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REGIONAL PERSPECTIVE ON IMPEP

Ronald Bellamy, Region I



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IMPLEMENTATION ISSUES

- o Balance between standardized questionnaire and existing management information systems**
- o Communicate lessons learned to all Regions**
- o Keep process focused on key safety issues to act as catalyst for developing high performance**