

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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MEETING WITH OAS AND CRCPD

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Nuclear Regulatory Commission

One White Flint North

Rockville, Maryland

Wednesday

September 10, 2003

The Commission met in open session, pursuant to notice, Nils J. Diaz,  
Chairman of the Commission, presiding:

NILS J. DIAZ, Chairman of Commission

EDWARD McGAFFIGAN, JR., Member of the Commission

(This transcript produced from electronic caption media and audio and  
video media provided by the Nuclear Regulatory Commission.)

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

EDGAR BAILEY, CRCPD Chairperson-Elect

STAN FITCH, OAS Chair-Elect

PEARCE O'KELLEY, OAS Chair

RICHARD RATLIFF, CRCPD Chairperson

KEN WEAVER OAS Secretary

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

CHAIRMANDIAZ: Good afternoon. I have bad news and I have good news.

The bad news is that Commissioner Merrifield had to go home to take care of some personal issues, and therefore, we really don't have a meeting because we don't have a quorum. Was that the good news or the bad news?

The second part is that we are going to have a meeting anyhow. We appreciate you being here and we look forward to interacting with you. And even if we don't have a quorum, I want to assure you that you have the full attention of the Commission.

Commissioner Merrifield expresses his regrets and he will look at the transcript of the meeting and I'm sure he will be very involved in whatever decisions we need to make. And with that, Commissioner McGaffigan, would you like --

COMMISSIONER McGAFFIGAN: No.

CHAIRMAN DIAZ: Mr. O'Kelley.

MR. O'KELLEY: Okay. We appreciate you taking the time to meet with us today. Hopefully, it will not be too long since we have been meeting relatively regularly lately and we addressed a whole lot of the issues that are of interest and importance to both OAS and CRCPD.

We fully intend to kind of do this the same way we held last year's briefing in that we are going to each take a little time and we are not going

to break it into necessarily to the OAS part and the CRCPD part.

Just as a general overview of some of the things that we been involved in over the last year, we continue to participate with NRC in the monthly conference calls. Those have been well received by the states. We continue to post the minutes of those -- most of those calls on Rad Rap and disseminate the information to not only the states, but a lot of the NRC staff also are members of that board and are able to share the information that was provided at the calls.

We are continuing to provide liaisons to the Management Review Board and we feel that the IMPEP process is working real well and appreciate you allowing us to participate in that.

We were somewhat involved, even though it was on the back end of some negotiations with NRC and EPA on the memorandum of understanding. The final pretty much state position has been that we were going to look at the seeking legislative remedies to address the continued issue of dual regulation and the other issue of not having finality when looking at decommissioning sites under CIRCLA.

We were intimately involved with the Government Accounting Office and their survey. It has recently come out. Several states also graciously hosted the representatives from GAO so they could get a firsthand look at state operations. And being one of the states that did do the hosting, we were happy to have them in there.

They were very professional and non disruptive. I think we gave

them some good information to mull over.

We did, as a note for everybody, become officially incorporated in July in the D.C. area through the help of Burke and Associates who also runs the administrative operations of the Health Physics Society.

We have been intimately involved in the working group process and we appreciate everything that all the staff of NRC has done to allow our participation, to aid us, to support our travel to participate. The Office of State and Tribal Programs has been a big help to us and we have caused them some grief and put them in some hard places between doing what the Commission wants and doing what the states want.

And I really appreciate their help as well as the other NRC staff in the other areas that have also been very supportive of our participation. The NSIR group that is allowing us to now work with some of the security issues and working with us has been very, very, very cooperative. We appreciate that.

We also appreciate the opportunities that some in NSIR had in helping us to meet with the Department of Homeland Security and Homeland Security Council at the White House. And the initiative that was taken to put on the security workshop, where a lot of us and a lot of the states were able to finally meet with our counterparts in our state Homeland Security.

It's a shame you have to travel thousands of miles to meet somebody in your own state, but we felt that that was a very positive step

and hope we will all reap the benefits from that.

The other areas that I would like to mention that we have seen some positive results in some of our requests is that now that the NRC is sending the SLO correspondence to the Agreement States directors that also helps us when we don't talk to our own SLOs in the states. So we are very appreciative for that.

We are also appreciative for the new efforts to keep us informed of some of the federal legislation that is going to have impacts on states and state programs.

We feel that is a benefit where we can possibly also aid NRC in talking with our local representatives or our state senators so that we can also help maybe apply some -- I don't want to say pressure but give them the information to they need to make an informed decision.

The first topic we had on the official agenda was a discussion on the national materials program. As you are aware, we are currently engaged in the pilots. Most of them are very active.

We had a very good meeting this morning on issues dealing with the pilot number one, which I feel and I think most of us feel is probably the key pilot in the whole program. And that group has done an amazing job and they have a lot of work to do. We are real pleased with the progress on that.

The pilot that OAS has been charged to lead which was to develop some guidance for an emerging technology we are facing some growing

pains with that one as far as identification of an emerging issue that really needs to be dealt with in a timely manner. We are continuing to explore all opportunities in doing so.

The working groups in the national materials program are, I think for the most part, very successful. We, I think, currently counted that in the past year we have placed 56 state people on one working group or another. And we are very appreciative to the states that allowed their time to participate as well as the individuals who have given of their time to do so.

There are some challenges to us. We are working through some of those. There have been some major improvements since last year. We are now better identifying the scope of the working group. We are better identifying the amount of time and the resources that are needed.

This has been a big benefit to be able to provide to the states this information up front so that prior to volunteering they can understand what's expected of them, what the scope of work is, what the product is going to be, as well as, the time commitment from them.

I applaud all that had a role in improving that process. That was one of the areas that were identified in last year's OAS meeting as an area of concern. We have seen a major improvement in that.

There are still some challenges. One of the challenges being is continued application of state resources to them.

We talked about this a little bit this morning. And for the most part,

the states have not been budgeted or staffed to perform these functions. Most of our staffing and budgeting has been concentrated on performing inspection, performing licenses, performing emergency response allegations.

So the states have a big step to take in trying to budget for increased involvement in the national materials program as well as on working groups so that we can probably -- would result in additional funding and additional staff to participate fully in the national materials program.

We hope to ensure that the other states understand this and they know this and can start working toward it. But it will take some time.

Especially with the current economic status of most state budgets, expansion of programs is not something that is looked highly by our political leaders and it's going to be a challenge for us.

We also urge or request that anything that can be done to get the information to the states as early as possible or to their state representatives so that they can have ample time to review the materials prior to meetings. We have seen some improvement in using teleconferencing to prevent the -- to aid in some of the travel time because when a state person comes here, we are looking at loss of two days at least with travel in most cases. For those folks that live on the wrong side of the country, the West Coast, they have significant travel time to commit.



But, all in all, it's a wonderful process and I appreciate NRC's allowing us to participate.

I would ask that in some cases we do see or we feel that we have gotten a direction and we understand the way the working group is going, and then, for some reason, they will be a change in direction or the staff feels that they are getting certain orders from the Commission that may not be exactly what we thought the intent of the working group was and in fact some issues we felt that the working groups were supposed to resolve are actually being addressed through SRMs and staff direction.

And, if there is any way that we can find a way to ensure that there is some sort of state input prior to SRMs being issued in some cases, it would hopefully alleviate some of these issues where we feel that the staff has their direction and that's the way they are going and basically have taken some of the decision-making out of the working group itself.

I don't have a whole lot more on the materials program. I think Stan Fitch is going to discuss resources.

MR. FITCH: That's correct.

First of all, I would like to start by saying we appreciate again the opportunity to be able to come to speak to you today and regret that Commissioner Merrifield cannot be here but I applaud him. There are some things more important than these matters and those are issues at home. I observe that amongst the Commissioners and I appreciate that.

I would like to speak with you about resources and funding issues.

This has been a dynamic issue for the states in the past year, a lot due to documents, assumptions and statements that have come from the staff of the NRC about funding issues facing states due to budget reduction.

First of all, I would like to provide some perspectives. The agreement states and NRC face similar issues in resources and funding. It must be noted that a greater percentage of viable personnel resources reside with the states. And the greater percentage of available finances lies with the NRC.

However, it appears NRC staff frequently interprets that these proportions of personnel resources as compared to financial resources reflect a weakness or lack of willingness on the part of the states to sufficiently maintain compatibility and participate in national security. We would like to reiterate that the states are very concerned about the national security, the potential for terrorist use of radioactive materials and we stand ready as Americans to assist our country in defending itself and minimizing the spread of the illegal use of radioactive materials.

Another topic I would like to address the elimination of the five-week course as performed at Oak Ridge, the five-week health physics course and the fact that it has been canceled.

The NRC has decided to no longer directly sponsor the five-week applied health physics course beginning in fiscal year 2004. It is understood by us that NRC wishes to optimize its financial resources, and

that makes sense.

I think any agency needs to take a look at how much money it is spending on different activities and make good, sometimes very difficult, decisions.

However, the research as to whether to continue the class should have involved the states to a more extensive level. The states should have been more consulted before eliminating the course.

For instance, the numbers of students would likely have increased markedly over the next five years. We may be looking at a simple slump over the next year or two.

We understand NRC is paying for vacant slots in the five-week course and that's a financial burden. But at same time, we recognize that within the states our training needs are likely to increase over the next five years since our budgets come back more on line. So we would have like to have been more involved in that decision.

When we received the questionnaire at the states, we just simply assumed that the NRC is doing an assessment. We do not know the background information that the NRC is actually thinking, well, maybe we should cancel this course.

If that information had been presented to us, the states could have come up with a response, the OAS could have provided a response as well as CRCPD.

Training is a circumstance where the NRC is not outrightly

providing a service to the states. Instead, it should be considered a matter of states, NRC and NRC working together to provide accepted methods for regulating materials licensees.

On the impacts of budget-based decisions, I would like to note that in a memo between the Commission and staff over the past year, it was assumed that state budget impacts would diminish the ability of states to participate effectively in the national materials program.

In additional, it is assumed that states would experience difficulties in maintaining compatibility and would be incapable of guaranteeing security of materials.

The Organization of Agreement States takes stock with these assumptions. While state revenues have been reduced, so have those of the NRC. The resources of the states have not necessarily decreased disproportionately as compared to the resources of the NRC.

Instead of quibbling over our mutual resources, the OAS recommends that the NRC and states work together constructively to meet our financial complications.

I would like to mention that the greatest resource to the states is our dedicated people as it is to the NRC.

Overall, this most significant resource has not decreased appreciatively within the states.

That ends my portion.

MR. O'KELLEY: It's your turn.

MR. BAILEY: Oh, okay. I thought you were going right down the list.

Mr. Chairman, Commissioner, I too am happy be here. It seems sort of a bad penny to keep turning up at these things periodically. In preparing for this, I looked at the slides that I prepared for the 2000 briefing and thought, well, maybe I will just use those same slides and provide an update.

But I decided it would be more appropriate if I do it in 2005, which is next year, when hopefully, I will be sitting in Richard's chair there.

I'm also not going to be very critical of NRC. We have our IMPEP coming up very shortly.

CHAIRMAN DIAZ: Wise decision.

MR. BAILEY: I'm going to hit on a few things here that I don't think the other people are going to hit on.

I think there's a great deal of need for us to more clearly look at imports and our interaction with Customs. We are seeing more and more examples of things coming into the United States. There is more concern about them and there's more press about things coming into the country.

We need to really focus, we think as being one of the states where a lot of stuff comes in, on how we can better get a handle.

I'm sure you have read the ABC News article about -- critical of Customs and just having a little chirper around and so forth. We got all kinds of new devices that are coming on the market. And we really need, I think, to be

working very closely particularly with Customs.

Now, it may be strange for a state to say that because we won't directly regulate them. But what often happens is Customs finds something and they've got to call somebody. And typically, that is a state in which they are located. If they know who to call.

And we are stepping up our efforts, in California at least, to get in touch with the Customs people and make sure that they know who we are and we know who they are.

I did mention one year I was here the need for something to occur on Internet sales of radioactive materials. As far as I know, we still have not done anything really to address that. I still feel very strongly that if there are -- if there is an issue with transboundary implications, it is certainly the regulation of the Internet sales of materials.

We happen to have eBay located in California so we keep -- people keep sending us complaints about eBay having radioactive materials for sale. Unfortunately, as I understand it, it is really cleared in a building somewhere in Colorado. So, I really would encourage someone to look into that a little bit.

I have got to hit on the training issue. Training is extremely important. We in California have some strange budget problems at the present time.

And the fallout from those budget problems are not necessarily -- well, they are partially that we can't hire new staff. We have a hiring freeze

on hiring new staff.

But the budget problems combined with other political problems have lost eight health physicists in the last two months. One of them to NRC, two of the eight were certified health physicists. I don't think I will be able to replace those people in the near future.

So, it is extremely important to us that things like the five-week course be continued and we have an opportunity to participate in those. The NRC is bringing the sealed source and device evaluation course to Southern California. And we appreciate that because we will get everybody we can trained in that area because we don't know who will leave next. And it's very important that we have a consistent review of those devices.

We do appreciate the increase in availability of security information. We have seen, I think, improvements in that. There are more communications. I think we still have a long way to go so that we are not reacting to rumors and false information or misinformation that we may get from the outside.

It is very important to us that we get official information. That is the best that you as NRC know and have gotten from your federal counterparts at the FBI or DHS or whatever.

With that, I would only encourage your -- I will close by encouraging you to work on the D&D issue. It is near and dear to my heart and I appreciate the opportunity to be here.

MR. RATLIFF: Chairman Diaz and Commissioner McGaffigan, also like Ed I'm recycled up here as the Organization of Agreement States Chairman for years and now as Conference Radiation Controlled Director's Chairman.

I also want to thank you for letting us have this exchange. When I was chair of the Organization of Agreement States the CRCPD was left behind. The two groups have really worked so much better together. We really have realized that we are basic because if you back and forth. If you are an agreement state you are also part of CRCPD.

But CRCPD has just recently been recognized by the IAEA as an official non-government organization, have been invited to observe the meetings in Vienna that are coming up next week. So Ron Frost, the executive director for CRCPD, is going to go over there to represent the organization.

We thank NRC for helping us on the orphan source issue. The CRCPD funding comes through like an umbrella-type grant and part of the -- the NRC money part of it is directly for orphan sources. So we have been making good headway there. It was an issue that seemed to be real important to the Homeland Security people. Pearce and I briefed down at the White House office building. And even more so they were concerned about radium sources that were available.

So we are hoping to work with them also to try to get rid of sources that are orphan sources to truly not have to worry about someone stealing



those types of sources.

We have really changed the way the CRCPD committee structures work just to be more efficient. We really have structured them now so that there are no committees on the books that are not doing anything.

If an issue has been resolved, the committee disappears or there is no need to even have their names on the list. And it is working better.

Through the parallel rulemaking with NRC it has worked real well too, because we really get the good input from NRC not only on the atomic energy material but when we are looking at NORM and other issues because there is that federal review from all of the federal agencies. It has been a good process.

We are seeing in states more and more materials using non-AEA materials. Right now the states are seeing what is called fusion imaging where you have the traditional CT scanner and using the positron emission isotopes.

And we are seeing more and more therapy where -- I was showing staff this week where M.D. Anderson in Texas is going to install three of the proton accelerators. They already have them in California, Massachusetts and Florida because you are able to deliver the dose where it really needs to go and not damage the other tissue.

So we are challenged in keeping up with the new technology as Pearce O' Kelley was saying, pilot one, looking at new technology that's for materials, it's more so they are coming in X-ray and accelerator-produced

materials. It is a challenge but we know that if legislation changes and NRC had more oversight over those other materials, we want to make sure that we continue to work there.

At CRCPD, we realize we have a lot of people who have been chairmen, who are still with states or are still active in the radiation areas who felt they were being put out to pasture once they had done their time as a chair-elect, chair and past chair.

So we have created an advisory committee of not only the state people who are still with states that are past chair but the people in industry or just retired who want to contribute.

The first challenge it gave them was to look at the pending U.S. Senate bill, I think 1043, and give some input. They have given really good input in some of the things they see that would happen.

And one of the things that jumped out right away was that radium, which we are concerned about, could no longer go to the site in Washington State because it would become low-level waste. And it would be a compact issue.

COMMISSIONER McGAFFIGAN: We have corrected that. Just so you understand that the Chairman sent a letter on, I believe, August 29th to conferees with a fix to that problem.

MR. RATLIFF: Good.

COMMISSIONER McGAFFIGAN: So if you look at the latest version, that problem has been resolved.

MR. RATLIFF: That would help. We really are trying to get rid of the rest of the radium.

You know, back about ten years ago we worked with Beatty, Nevada site in the state of Nevada and we got rid of, we think, close to half of the radium sources that were unwanted.

And so we really hope that we can work through this next couple of years to get rid of the rest of the radium sources. Many of them are in storage. If they are in storage and been there a long time, they are leaking. The radium sources just inherently leak because of the radon gas issue. So we are working through that.

We have been working also on homeland security. We have set up a separate council at CRCPD to work on homeland security. As we continue to meet with folks there. And Ron Frost, our executive director, has been meeting with staff from the Department of Homeland Security looking -- because we have a lot of questions.

One of the things they didn't realize was that the Conference of Radiation Control has a comprehensive listing of all state agencies and all the federal agencies, the contacts, even in the states down to real specific areas.

So we provided them some of the telephone books and the context, because they really didn't realize there was infrastructure in place. I think that helps.

We are working, like, say, with the fusion imaging and we plan to

work with the industry to put on a training symposium in February in Kansas City, Missouri. So we hope when we get to that point, when we get it finalized, we will invite the NRC if you would like to participate. We think it has been a good relationship and I'm glad I get to come here with the other role today.

Thank you much.

MR. O'KELLEY: Ken, do you have anything you wanted to say? I have a few things --

MR. WEAVER: The orphan source that we piloted several years ago in Colorado as part of that success story Richard mentioned. I know that was of particular interest when we talked year ago. That's been working. And there are some generally licensed devices out there that may need similar kinds of attention although they may not be quite orphaned.

MR. O'KELLEY: I guess it's back to me. A couple of closing issues and things that were touched on.

Ed had mentioned the issue with Customs. There are some things we need to do in the future that we have been concentrating on as far as security area goes on prevention. But I think we definitely need to begin focusing or increase focus on response in case that there is an incident. And I know we got some efforts along that path but we need to probably increase our efforts in this area.

The State of Washington, I think, learned a lot in their participation

in TOPOFF II. We hope to -- I think Deborah McBall is working on getting some of the procedures they used posted on the CRCPD site, which would be a good starting point and would be able to provide a lot of lessons learned from that so that that can be shared with everyone.

From a state perspective, we feel that there is major disjointed approach from the federal standpoint on homeland security efforts and funding. It seems as though that there are several agencies that are going off and spending money here and there and there's no coordination to determine where the money is going, who is getting it, what it's being used for.

What we are seeing in the states and we have seen this with Customs, and we have seen it with now with additional equipment or detection equipment in the hands of first responders, firefighters, and policemen. It's going to have an impact on state radiation control programs that I don't know has been completely considered.

These people are going to be experiencing or seeing their detectors pick up licensed activities as they are traveling through their communities. We had this happen with Customs already where they are calling, we have a problem, we have a problem. My chirper is going off.

And so we have a major need for supplying these people, not only equipment but information, training. They need to understand the proper maintenance of this equipment. They need to understand the need for calibrations and exactly how they work other than just watching a needle

move.

We feel that somewhere we need to coordinate this because it is going to have an impact on state programs because we are going to be getting the calls from these people when they are detecting things as they are riding around in their communities.

In getting back with an issue that was brought up earlier about training, not only do we need to train these people, we also need some additional training for state staff when it comes to the issue of how to inspect against emergency orders, how to respond.

That's why we really feel that now is really not a good time to start doing away with training support. It's the time to increase it.

One area that we had discussed specifically with the Centers for Disease Control in the conference we went to a couple of weeks ago in Atlanta when they were asking what they can do to help is some sort of additional funding for the program such as the old ... course. That was an excellent course in teaching individuals how to respond to emergencies, to accidents. And I think it can be easily fixed to include response to an RDD. And it is an area I really think we need to look at.

I would really like to work with NRC and the states and let's try some inventive approaches to training. We understand there is a major cost. There is a cost to you. There is a cost to us. There is a cost to everybody.

We have begun some preliminary discussions with the people at

Texas A&M. But if we look to see if we can find a way to try to come up with web-based training, CD ROM-based so that with something like the five-week course where we could have three weeks of internet-based training and then, maybe just two weeks of classroom, it would cut down the cost considerably.

As well as having canned programs that can be a self directed approach that would not require the extensive training funds that is we have now. I think we have some opportunities and I would love to see us all pursue those.

In regard to the amending of the Atomic Energy Act to give the NRC authority over certain accelerator-produced materials, I would really like to see NRC -- I don't want to say defer to states, but give the states a lot of credit for what they have already done. We have been regulating these materials for years.

There is going to be implications in areas where you have non-agreement states that are currently regulating some of these materials. And what's going to be the impact when NRC in a non-agreement state now has authority over some of these materials. How are we going to administer that? Is there going to be a separate agreement for those states that want to keep their own state authority for that?

So there are some impacts to the states to this amendment and I urge you all to keep the states informed, ask the states and let's not reinvent the wheel. We got some good programs out there that are

working. Please let us lead the way in this one.

MR. FITCH: I wonder if I may make a few extra comments just for a moment for two.

I want to say thank you to the Commission for the efforts that State and Tribal Programs and Nuclear Security Incident Response, the effort they have put in to involving the states in national security efforts. It is a very fine staff, some very dedicated people.

And while no relationship is perfect and there have been many difficulties to have to iron out, without beyond a shadow of a doubt, both of those divisions have worked with the states in the long run to develop something that is good for the country as a whole.

I would also like to make mention of the fact about the states willingness to participate in common defense and security. While many views might be held, different views, I must reiterate that the states stand behind the Commission on this issue. The visions of how that might be accomplished, obviously, vary significantly.

In one comment about the non-AEA materials, this is clearly an area where the states can take a leave under any format of the national materials program. The states have the expertise. And I must mention the Act, the Atomic Energy Act, where it says the Commission and states will work together to be compatible with each other in certain areas. And this is one area where the states can take the lead if the legislation enables Commission regulation on non-AEA materials.



This is one area where the states can help significantly.

MR. O'KELLEY: We thank the staff, I think.

COMMISSIONER McGAFFIGAN: You don't have an IMPEP coming up?

MR. O'KELLEY: Actually, my MRB was yesterday. So I don't have to worry about it for four more years.

I don't think we adequately thanked the Commission.

We saw some major problems. We had some major concerns and we came to you in April. And I appreciate your willingness to meet with us. I appreciate your willingness to listen to us. And I appreciate the efforts and the things that you did to ensure that we were brought into the picture for participation in developing security orders and dealing with national security.

I thank you kindly for your willingness to do that. I think it really helped soothe a potential time bomb that was ticking from a state perspective. And I thank you kindly for doing that.

CHAIRMAN DIAZ: Well, thank you so very much. Is that --

MR. BAILEY: I'm going to be quiet for a change.

CHAIRMAN DIAZ: That's amazing.

I want to thank you for information you presented, for your kind words.

I think it is obvious that the Commission values the Organization of Agreement States and CRCPD. Although as an engineer, I realize

differences are important. If not, you don't have any way to correct which way you are going. We do value the differences because it allows us to interact and, you know, get to some way of conversion.

I'm sure we will never converse on every issue, but I want to assure you that we do value not only your opinions but we depend on you and we realize that very much.

Let me make a couple of comments before I pass to Commissioner McGaffigan.

I think the problem in California is that you are not taxing the movie industry. If you start with that and get Arnold Schwarzenegger to do it for you, you might get ahead.

Let me make one comment that I think covers it overall and one of the underlying issues, which is the organization of the nation regarding how we deal with safety and security. We all are experiencing those growing pains.

One of the efforts that the Commission expects to bring to fruition in the near term is better setup with the Department of Homeland Security and the Homeland Security Council in organizing and streamlining and knowing how those relationships go. And it will go across the board and go from the infrastructure to the border and transportation. So we are making efforts and we understand where you are.

We all have seen the fact that this grew very rapidly and there are many, many different types of issues coming from different places.

We hope that if we can achieve some understanding of this issue that it will impact directly in what you are doing. So we are hopeful that in a reasonable period of time we will bring some of these issues to a new level of, let's call it steadiness or framework or not something that changes every day. That will impact directly in what you do.

I think you probably realize that Commissioner McGaffigan is in many ways now the lead commissioner for many of these radioactive issues.

So I'm going to stop right here before I do any more harm.

COMMISSIONER McGAFFIGAN: Thank you, Mr. Chairman. I'm just going to plunge into questions. I appreciate the relationship we have. You have given us a lot to raise questions about, so I'm going to plunge into the questions and see where that leads us or comments in some cases.

I'm just looking at my notes to what each of you said.

I'm glad that you -- on the MOU with EPA that you have decided you don't need to go and negotiate painfully, I can assure you, parallel MOUs. As I said to last year, I don't believe you are in their cross hairs like we are.

And we have proposed in the past and we still support, although there does not seem to be a lot of Congressional interest, in a provision I think we first proposed when Shirley Jackson was Chairman in 1997 that would cover both you and us in terms of both finality and dual regulation. It would basically say EPA would come into a site only if we felt there was a need for them with their greater authorities and all that to come into a site.

Otherwise our decisions, either yours, or ours would be final.

But, there does not seem to be a lot interest in that. We are about to try to make this MOU a living document by consulting with them on a few sites and see what happens. You may want to wish us well.

The issue of the working groups. I just glanced at the working group participation. It does strike me that there is a disproportionate burden placed on a limited number of states, many of which are represented here. Texas, Massachusetts, Illinois, South Carolina, Alabama, Ohio, Florida and Georgia seem to be the states -- and the first few are the ones that seem to carry more of the burden in terms of participation in the working groups.

I'm sure it would be nice if many of you on the other side of the table who represent those states to have some broader -- I left out New Mexico and security. But the working groups were non-security working groups. And I think you all have to figure out how to do that.

We are glad to facilitate coordination within the state between the homeland security advisor, the state liaison officer and you all. We have similar problems sometimes at the federal level.

There's one thing that was said with regard to using teleconferencing that struck a cord. We recently had to make some budget decisions here. One of which I'm going to come back to. But we see some opportunities to trim travel in ways that shouldn't have much of an effect on our ability to function.

And in particular, we have teleconferencing capabilities that I don't think are fully utilized. I have talked to regions on having regional counterpart meetings and whatever and I think we can -- you definitely should pursue with the staff that notion.

The health physics course, I will tell you what we heard about the health physics course. It was in the budget that we got in late June, early July. It was not particularly highlighted. And it was an FY 2005 decision.

We are dealing with a 2005 budget now, sending it to OMB. But it was a decision that the staff made in the 2005 context that they push back into 2004. And mentioning Texas A&M means that you have heard the same things from the staff that we have heard from the staff, that Oak Ridge has a course, that Texas A&M has a course that look like they may be able to meet the needs of folks, maybe even in the Texas A&M case, less expensively.

But I do think we probably could have done a better job in letting you know this stuff. That when we put out -- I think the best point that was made was when the questionnaire came out, there should have been a little footnote, this is a questionnaire we are taking in the context of putting together our budget, hint, hint or whatever. They will never probably bring you fully into the budget process. They barely bring us fully into it. That's a slight exaggeration. But you -- I think it's fair for them to better communicate with you what they are up against.

There's one point that Stan made a couple of times and I want to

make absolutely clear we never thought -- the thought never entered my head and I don't think any other Commissioners' head that the states were incapable of playing in the security of materials. You know, in our letter to GAO on the GAO report that I will come back to of June 26th, EDO Travers on behalf of the Commission, described why we were doing common defense and security as we did it, why we felt that that was what our statutory framework as it exists currently requires. And the ending point of that paragraph was the possibility of state budget shortfalls played absolutely no role in the Commission's decision-making. It didn't. That issue never came up.

Let me stay on the GAO report for a moment.

We didn't think -- the CRCPD comments started off with the report is well written and points out major weaknesses in radioactive source security in both NRC and Agreement States licensed facilities.

We obviously took a much harsher line on the GAO report because we found it really technically pretty bad. And we would have liked -- the opening line of the report mentions iodine 131 as an isotope of concern.

You guys were all over us about a year ago, early 2002, when the staff was talking about potentially involving a much larger set of licensees and security issues. We had not got very risk conformed yet. Now we are down to 1,500 or so instead of 20,000.

You were ones telling us. Wait a second. You don't have to be dealing with iodine 131 or tech 99. So I wish -- or tritium.

The GAO is worried about somebody, I guess, breaking an exit sign in a mall or something. And I think we need some vast quantity of tritium not a couple of curries to get any sort of health effect.

So it really was technically a very flawed report that we didn't think reflected at all where we were or you know -- we are the ones telling the psychology stuff.

I talked to the guy yesterday. Why the heck didn't you drop iodine 131 from the first line of your report to Senator Akaka, because it's nonsensical.

His reaction was, well, our concern on tritium and tech 99 and iodine 131, those things that are mentioned is there could be a psychological impact to somebody breaking an exit sign or something like that.

I said we can't deal with somebody getting micro rems or bio rems or something because there might be a psychological impact to that. We have to deal with first things first. That's why our effort was to work with the IAEA -- as you know, we could not bring you into the discussions at the time we were having with IAEA but we try.

We kept you informed, I think, starting in the spring, as to which radio nuclides of concern were the ones that we felt were the right ones, what we think is the same as the Federation of American Scientists and the same as the Monterey Institute and anybody that has thought about this stuff, what thresholds we were thinking of taking action.

And we felt that we needed to first work on that stuff and then later we could work on other stuff. But, GAO really didn't get it.

As I said, I'm a little disappointed. I'm going to give you a chance now to speak. I'm a little disappointed at the OAS and CRCPD comments because you didn't -- it was like you were reading a different report from the one we were reading.

MR. RATLIFF: We started out diplomatically. Then we went in and pointed out pages of technical issues. We started out diplomatically with it and it could have been stronger.

MR. O'KELLEY: This was our first crack. We didn't know what to do. We were going in blind. Plus, I guess from the state perspective, we don't have to face the wrath of GAO.

COMMISSIONER McGAFFIGAN: Thank you very much.

The only problem is that they, to some extent, are using you against us. And I don't think you technically on some of these issues are in any different position than we are. You are certainly not recommending to us that we chase endocrinologists or exit signs or whatever in our attempts to deal with the tender psychology of some members of our public who -- whatever.

So I just think we could have done better in that we probably should have gotten our comments out first in the month of June. And then you might have or might not have been able to adjust.

You got your comments in actually faster than we did. Maybe



because we were having such a hard time with the darn paper that we had more comments to make.

MR. FITCH: I wonder if it might comment on that. Back in June of 2002, State and Tribal Programs had faced a literal firestorm from the states over the decision of to pursue common defense security and began issuing security measures.

The states to this day hold much to that perspective.

COMMISSIONER McGAFFIGAN: I understand you have the perspective. We have done the best we can, including in this June 26th letter which I think we very promptly shared with you in meetings that we have had upstairs and we will continue this meeting upstairs to talk about details of security.

We have tried very straightforwardly to tell you that it is our interpretation of our statutory mandate that we have to do this. The things that we are doing with the large panoramic irradiators that we cannot discuss here.

I don't think we would have done that for safety. We clearly had not thought about doing it before September 11th. We are going it because we think that there is an extra security rationale for doing it. We are doing it using safeguards information, modified but basically safeguards information. Authority under Section 147 of the Atomic Energy Act, which is a unique authority this agency has to protect information.

I go to meetings of other groups in Washington talking about chemical security. One of the problems they are struggling with that we solved in 1980 is that the detailed security plans of a chemical plant cannot necessarily be protected if they are handed over to us. We can protect the detailed security plans of an irradiator or a reactor or a fuel cycle facility.

So under the authorities as they exist at the moment, we believe that we are doing the right thing.

I think the states would like the authorities to be different. In our letter of June 26th to GAO, we said we are not prepared to make such recommendations at the current time but were willing to think about it. The legislative process will take a long time.

MR. FITCH: A lot of it is a timing issue that a lot of the information was not provided to the states back in early 2002. In fact, the states freely and willingly spoke with the GAO because suddenly, we had the opportunity to have our concerns aired. And we felt at that time and perhaps now, it might be a different perception but we felt at that time that the states were not being heard by the Commission.

And at many times still to this day, the states are kept relatively in the dark about what's going on here. If more information had been dissimilated at an earlier point in the game, it would have helped a lot. Now, there are going to be some states that never will be happy. I will just say that right now. There are certain people who are going to always

question us. There are certain people who are going to constantly point to their agreements with the Commission that were signed many years ago.

However, I would say that the majority of the states are willing to assist the Commission still. Again, it is a timing issue of how all of this broke.

I can speak for the boards here that we understand currently much better your position than we did even six months ago.

COMMISSIONER McGAFFIGAN: I understand that and I believe everything is imperfect in this world. Our focus, in all honesty, for the first period of time -- I think we were quite risk-informed in our approach to security. We started with reactors, the February 25th order. Honeywell facility was fairly high up, the gaseous diffusion plants. Those are really the only three chemical facilities that we had to think about really hard that we licensed.

And then went on to spent fuel, ISFSIs. And I think all of that is rational compared to a normal materials licensee even a larger irradiator that you first want to us work on those other guys.

We had the staff churning because we are capable of parallel processing in this agency, not necessarily all of us. We can't parallel process everything. I can parallel process.

But we were not parallel processing very much. There weren't very many Commission's synapses connecting on what the staff was doing with the folk, the things that we were not necessarily working on as a first

priority at the time.

And when we saw -- they were actually sharing it -- the honest answer is they were sharing some of this stuff with you before us. And it was through you around June of 2002, that sort of time frame, when you all came back to us and said, what the heck is going on.

The Chairman, former Chairman Meserve's top to bottom review really was going to the bottom. We were going to potentially have security measures for every -- additional security measures for licensee, 20,000 licensees nationwide.

And that was just the staff being complete. And then, we all reacted. We put it in a box. I think you guys had some ability to help us put it into the box although not as much as you would have wanted. So as I say, what we did, I think, was quite risk informed. It was quite rational in terms of doing first things first and second things second. And we were not, as a Commission, thinking about this stuff until the latter part of last year, I think, as Commissioners. Because the reactor stuff and the homeland security advisory system, putting that in place for the reactor facilities and other high-risk facilities that was August of last year. That was absolutely consuming us.

So, there are a lot of things we could wish were done differently. We need to work going forward. But as I said, from our perspective, state budgets that was not an issue. It was us trying to figure out what does our regulatory existing statutory framework require us to do. Where does our

authority -- where does your authority end and our authority just have to take precedence. And that was what was driving us.

On the budget issue with the health physics course, we have heard from the state -- from the staff that Texas A&M and Oak Ridge can fill the gap.

If you don't think that -- Pearce mentioned getting some sort of working group together on training, thinking innovatively about the future. I'm perfectly open to that. Why don't you comment on the health physics stuff.

MR. BAILEY: I have talked to some of the people involved in the course and the question of their commercial course taking the place of NRC course. I have been led to believe that they did some special things in the regulator's course that are not included in the commercial course.

I could say tacky things about A&M but I will refrain from doing that. I think Texas A&M will be able to put on a really good course. And they have done it with Richard's help and so forth.

But, I think it was more again how it happened. And without -- I mean, I literally learned of it not from NRC but at the HPS meeting from Oak Ridge people.

COMMISSIONER McGAFFIGAN: When was that?

MR. BAILEY: That was May.

MR. RATLIFF: No. It was the end of July.

MR. BAILEY: Yeah, end of July. I'm sorry.

MR. RATLIFF: We learned it together.

MR. BAILEY: And so, being the way we tend to be, our immediate reaction was we had been offended.

COMMISSIONER McGAFFIGAN: As I say, I think I understand the defense. I think it is particularly hard when -- we normally make budget decisions for a coming year and you have 15 months to tell you what's coming. That's what we did on some of these other things in the past that we -- you literally we make a budget decision now in July, August, the President's budget is unveiled in February. We are certainly absolutely free to tell you, look you have got to adjust to this coming October.

In this case, making a budget decision for October 1, 2004, the staff decided, well, gosh, this is such a ripe thing and we can save some money. Let's back peddle it into 2004 as an adjustment so we can find money to do something higher priority, to deal with two applications for enrichment facility, both the LES and USEC. This is just an example.

So they make the adjustment. I think at that point we have not approved it yet. With the SRM that we put out approving the budget is in the August time frame. So it is not final until the SRM is final, although it really was not in play.

And so the staff then feels reticent to tell you instead of getting 12 months' notice or 15 months' notice or at least seven months' notice, you get one month's notice.

The staff talks to you about proposed rules long before we see the

proposed rules. They talk to you about a whole bunch of other stuff before we see it.

And if they are really seriously considering a budget cut that affects you all, I would have no problem with them being very frank in dealing with you on that.

MR. BAILEY: With regard to the course itself, I think all of us feel that the commonality of training between state program people, the various states and what we have seen more recently in recent years where actually NRC staff are in these same training courses has led to improved respect and improved training and improved interaction from state to state with NRC.

So that's another reason why we hate to see such a very basic course just go bye-bye and go off and catch as catch can.

MR. O'KELLEY: The issue is that we would like some -- at least feel like we are considered when a budget decision you make impacts our budgets. The fact that there may be alternatives out there, yes. The fact of whether we can afford them is a whole another ball game. With the NRC contract we could, at least over the poorer states or the states that don't have a lot of resources could occasionally get a person in on standby to fill the slot. Now that option is not there for those states.

So there is a potential impact other than just the whether there's an equivalent course available somewhere. The being able to afford that course or the cost of that course has now gone up considerably for a lot

states.

MR. BAILEY: The other thing is I can get somebody to a five-week course sponsored by NRC by mentioning the agreement. I can't get somebody to a five-week course at Texas A&M because it would be nice to do.

MR. RATLIFF: The reason that we worked with the one at A&M was because in our legislators' infinite wisdom, they put an out-of-state travel cap. So we knew that was an expensive course when we were paying the travel because the tuition didn't bother us, because that is covered under other cost but the travel. So we worked with A&M on the equivalent course.

I agree with Ed the camaraderie that has been developed at all the courses with NRC and state people has been helpful for all of us. We just did it out of necessity.

MR. O'KELLEY: I would really like to see NRC, the states work with Homeland Security, work with these people that have some funding available, because I think that may be a way to help fund some of this training. And this training can be directly applied to the security response. And so I think doing away with it might send the wrong signal when in actuality, we need to increase this.

Specifically when we are looking at from a state perspective, we are going to have to bring pretty much all of our employees into play in the event of an actual event. We are going to be bringing our x-ray staff in.



And we need opportunities for these people to be exposed to radiological incidents or radiation incidents from sources to give them some training and experience in these areas. And so I wish --

COMMISSIONER McGAFFIGAN: I'm not going to continue this because this is a discussion that sounds like you and the staff should have had in the May time frame or April time frame when they were putting the budget together for the Chairman.

I don't rule out reconsidering the whole thing. But let me ask one last question and then turn it over to the Chairman.

I warned through Paul Lohaus -- Richard, I hope that you heard that you were going to get this question. How does the T-NORM rule stand in CRCPD? The one that's been in the board for about a year now and our sister agency does not particularly -- we outside of our jurisdiction say it looks good to us. They in their jurisdiction say -- I guess have been saying to you if you dare to adopt Subpart N they will guillotine you or something.

MR. RATLIFF: I'm not sure they said because I have not seen it yet.

And it has something that has probably objectionable, as you know, the 25-millirem. That's what the team recommends. What the CRCPD board decided to do, primarily because the state of Louisiana came and they have been -- you been seeing a series of lawsuits against big oil companies from Mississippi, Louisiana because of NORM.

So we decided to take the rule to the Agency for Toxic Substance and Disease Registry that does the health studies for EPA and have them review it.

COMMISSIONER MCGAFFIGAN: That's part of CDC?

MR. RATLIFF: Yes, and once we get that reviewed -- and they have asked some good questions -- then we plan to take it to our November board meeting in Frankfort, Kentucky, and hopefully pass it as a final rule.

COMMISSIONER MCGAFFIGAN: So basically you're getting ASTDR to give you a go, no go or give you some advice on it?

MR. RATLIFF: Right. What has happened in some of these lawsuits -- one of the oil companies was like a \$12 billion lawsuit. They would not accept the consultants' laboratory analysis or their survey. We felt that if, in fact, the group that does this for Superfund sites looks at the rule and says this is protective of public health and safety when we know for other sites that have radium -- toxic substances in these registry uses the uranium standard of 515 which is like 100 millirem.

So we are hope this 25-millirem really makes it uniform. If you are a

NORM site, you shouldn't be any different than an AEA material site.

COMMISSIONER MCGAFFIGAN: Carl Paperiello recently came across an EPA record of decision where I think they were at 6.2 peak curries per gram in the first five centimeters or so, so above a 100

millirem.

MR. RATLIFF: What do I half to do to get a T-NORM MOU?

COMMISSIONER McGAFFIGAN: You want lifetime employment.

CHAIRMAN DIAZ: All right, thank you, Commissioner McGaffigan.

Let me just make a comment on the same lines on the issue of the security and the timing.

I think it's difficult to understand that there was a long period of time where we were doing things and not thinking about of all the ramifications. For that, you know, I cannot apologize. I think it was the right thing to do.

However, we do understand that it created some concern. And if we had the experience at the time that we have now, we probably could do it differently. But, the Commission was just working furiously trying to get things done.

It is not damn the torpedoes, full speed ahead. We were just quarter speed ahead but we were doing things.

MR. BAILEY: Some good comes out of everything.

CHAIRMAN DIAZ: I'm sure that is correct.

MR. BAILEY: And one of the things that I think came out of that little furor was that we are now getting thing that is go the SLO, for instance, which we were not getting before and we didn't know we weren't getting them necessarily.

And so now we are getting things that help us do our job and help us interact with people like your reactor licensees and so forth that relate

to security and so forth.

I would encourage you, though, that then you have meetings at reactors with DHS that you include the radiation control program and the Agreement State program in the initial list of invites to those meetings.

CHAIRMAN DIAZ: When we meet with them regarding the specific reactors?

MR. BAILEY: Right.

And I don't want to belabor the point too much but we did have meetings scheduled at Rancho Seco and one at either Diablo Canyon or SONGS.

COMMISSIONER McGAFFIGAN. With SONGS and Rancho Seco. They were secure meetings. They were DHS meetings.

MR. BAILEY: But as I understand it, NRC provided sort of a list of people that should be included in that meeting at the reactor.

It did include the SLO and the emergency services people but it did not include the radiation program.

It is something that should be done.

We got on the thing but then the reactor basically said we only have room for X number of people so we are not letting you come.

COMMISSIONER McGAFFIGAN: That was a case, as the Chairman said, where DHS wanted something.

I don't know that we would have given them the list because we were playing catch-up ourselves. It was Millstone, and Rancho Seco and

SONGS. I suspect it was the reactor, it was the licensee who DHS was dealing with directly using their contractor, which was Argonne National Laboratory. I think they may have done a lot of this. Maybe in playing catch-up, we gave them a list too.

CHAIRMAN DIAZ: Which goes to the fact we are trying very hard to make sure that all of these things belong to a structure. And I believe you will be beneficiaries of that structure. Things will actually be falling in place and I think it's working towards that. It really is.

You want to say something?

MR. FITCH: At the conclusion. When you are through.

CHAIRMAN DIAZ: Or you want to conclude after I conclude?

MR. FITCH: I'm not sure.

CHAIRMAN DIAZ: Let me do this, you conclude and I completely conclude.

MR. RATLIFF: If I might before you both conclude.

COMMISSIONER McGAFFIGAN: I think the Chairman has a few more questions.

CHAIRMAN DIAZ: That's right.

MR. RATLIFF: If I might on the on that security direction, I'm sorry to interrupt, it would be a great comfort to some of the states to know that the Commission is not invoking common defense and security just simply to somehow mitigate or dilute our agreements, our authority with our states.

COMMISSIONER McGAFFIGAN: Absolutely not.

CHAIRMAN DIAZ: Absolutely not.

MR. RATLIFF: And I think that is appropriate for them to hear that right now.

CHAIRMAN DIAZ: Absolutely not.

Let's go to another issue.

The training, we will take another look at it. Commissioner McGaffigan is right. We will look at this. We will give it another look. I don't know what the results will be but I will certainly do that.

I do hope you keep pushing for the NORM. We really think it is the right thing to do.

I had a specific question on, as you mentioned, incidence response. And this is something that we are really now trying to make sure that everybody is on the same wavelength and emergency preparedness responses are an important part of this new phase of the nation.

And I just wondered whether you have any comments on how we are doing in that regard with the states however you see the situation developing?

MR. RATLIFF: I know from our regard, we are getting good communication. What was encouraging to us is that Argentina recently had reported to us an issue that we needed bring up and bring to the FBI.

And I think because of the work with the IAEA and the interactions

there, I think we are getting better all the time. It is a learning process but we are always going to respond whenever there is a real incident. But I think the process is getting better.

CHAIRMAN DIAZ: You believe that we are communicating well in that specific area, incident response, emergency preparedness and so forth?

MR. O'KELLEY: Yes, communications yes. I do think we need to really ratchet it up how we are going to respond.

MR. BAILEY: One of the things we really appreciate is that stutter before the preliminary announcement gets out, you know, when we phone you and tell you we got something that it does not go out immediately because quite often that first phone call contains a lot of inaccuracies. That stutter step really makes it easier for all of us.

CHAIRMAN DIAZ: I think the accuracy is important and could do more harm than good. That is an important issue that we are concerned with.

Something that you did not mention but something we keep worrying about is the Part 35 training and experience requirements. Are we convergent to a realistic scheduling which we can expect the revised training, experience requirements will be achievable as you look at it? Any comments on that?

MR. RATLIFF: In Texas we got caught in the cardiologist, radiologist wars a few years ago and our advisory board has more

restrictive requirements.

We feel that it needs to -- it really should be an issue that is a trans-boundary issue and that if a radiologist or nuclear medicine physician or cardiologist from one state is adequate, he or she is adequate in another state. So I'm hoping that we get to that point.

COMMISSIONER MCGAFFIGAN: We are delighted to hear that from you because that was not the position of the Alabama representative that was at CRCPD a few years ago. He felt passionately the other way around.

MR. RATLIFF: There's always minority reports.

MR. O'KELLEY: Dissenting opinions. But, in that same vein, one of the very loud themes that came out of last year's OAS meeting was that when this is all settled that the states be given the full three-year window of adoption for that and not be cut short.

COMMISSIONER MCGAFFIGAN: Could you do Part 35 and then do like us, amend the T&E -- if you're waiting for us to finish the rule that we're just proposing.

MR. O'KELLEY: That was the part that we have the three years additional for the T&E. Because specifically, with each state's legislative process is different. The state of Texas when they stay in Texas only meets every once or two years. So there is legislative hoops we have to jump through too.

So we would really appreciate the three-year window remaining for



that.

MR. FITCH: If I might give you a perspective. New Mexico has not yet adopted the changes to Part 35. Of course, we can be more stringent than NRC. We will be adopting those changes some time next year and we probably are going to stick pretty close to the old T&E requirements. It makes more sense for us from the standpoint of implementation verifying the credentials of physicians to ensure that it protects people within our state.

Our licensee expert within our state looked at the new T&Es and she felt that, gee, they are just simply too lax. And upon our review, we felt the same way. It is not to insult any physicians. But we feel like we need to ensure the health and safety of the people of the state. It is not to question the credentials of the doctors.

COMMISSIONER McGAFFIGAN: This is not a meeting on Part 35 put my recollection is that the compatibility category for the T&E is a fairly hard one where you pretty much have to adopt it for the very reason Richard mentioned. We didn't want a doctor working in Virginia not to be able to work in Maryland or vice versa or D.C. And we got a lot of these places, which are urban areas that happen to be in multiple states, some of which are Agreement States, some which are not. So I think on T&E we adopted a fairly hard compatibility. So you may not have the flexibility that you are looking at. You are reflecting the old Alabama position, I think.

MR. BAILEY: We think that in those situations that you mentioned that the NRC facilities are excellent places for them to get that training and experience.

CHAIRMAN DIAZ: I knew there was hook. All right. I needed to ask that.

Now, let me get back at you right where you started in nuclear materials program, seems to be progressing ahead. But there is this area of the task for guidance for licensing and inspection. You seem to be lagging behind in that area.

Do you have any recommendations on how we can support in any way use so that that will come up to par with the others so it will not be delay.

MR. O'KELLEY: The key issue is identification of an area that needs the guidance right now.

In the discussions this morning we had Kathy Allen who was on the phone with us and she has been given the task of chairing this pilot. And when it was first considered, we seemed to be getting, especially in the medical field, a lot of emerging technologies coming in rather rapidly.

Unfortunately, the ones we have seen as of late are in areas that are not under NRC authority to regulate. So, testing the fact that the state produces something that NRC would accept, the issue is why would you accept something you don't have authority over.

So we can probably do some things. But it would not be something to

really test whether NRC would accept the state products, since NRC doesn't regulate the PET, fusion technology and so forth.

So the issue has been more in trying to define or identify the emerging technology that this guidance is needed on. And the benefits you can give us are if you hear something or identify that issue, let us know. We have got groups out, CRCPD has developed an emerging issues council.

We have looked at some of the things that they have identified through that group. And we intend to work very closely with that group in doing this pilot. But, again, none of the issues they identified were suitable or relevant to NRC.

It may come to the fact whether we want to look at -- and we are going to consider whether we want to re-evaluate the charter of the pilot and we need maybe to switch a direction here or there.

Some of the issues that we feel that pilot one will identify may be the source of our topic and hopefully, with some of the -- with this survey that's now getting ready to go out go out on pilot one and what we are going to be doing with pilot one at the annual AOS meeting, we may get that topic identified.

We recognized this initially and it was a concern we brought up to Paul and several others when we first started the pilots. The question was, okay, we got to kind of -- we are at the mercy of the emerging technology, and we don't drive that train or control that time line.

That's been the key issue with that one.

CHAIRMAN DIAZ: When you mentioned the D&D, I was not sure that we were on the same wavelength. The grant program seems to be going very well. You keep retiring all of these sites and seems like there are only a very few contaminated sites. That's not what you've referring to when you said the D&D issue?

MR. O'KELLEY: No.

CHAIRMAN DIAZ: What were you referring to?

I think Ed brought that one up.

MR. O'KELLEY: You mentioned D&D briefly.

MR. BAILEY: I did. My Alzheimer kicked in.

CHAIRMAN DIAZ: My notes say p.o.k.e..

MR. BAILEY: I think he was referring to the MOU in the continuing --

CHAIRMAN DIAZ: Because I thought the grant program which I think is doing well, we got a lot of sites retired, got a few -- very good. Now, I'm going to give you --

COMMISSIONER MCGAFFIGAN: I had actually one comment and a question. I was just going to refer back to Ed Bailey when he was talking.

The ABC news stuff on depleted uranium I think has been a disservice to the agencies. Depleted uranium is not something that we have to worry about from any sort of health physics or health and safety

perspective. And it -- when I watch those things my reaction to them are very, very negative because they are not really working on the issue.

MR. BAILEY: But you can spell depleted uranium.

COMMISSIONER McGAFFIGAN: The Internet sales of radioactive material, we are quite open to trying to figure out what to do there.

Joel Lubenau, a former staffer of Greta Dicus, recently wrote the Commission expressing concern about some of these brokers. Indeed for old -- who are not licensees of anybody, you or us. All they serve is go-betweens.

And some of the stuff may be legitimate and some of the stuff could be illegitimate. So we are quite anxious to think about that, to try to figure out what it is we can do to get our hands around it.

Like you say, eBay is -- eBay is not the case for some of these other things that I'm talking about but eBay is not a licensee of us. It is not a licensee of you. But we have to make sure that if they are going to be the go-between between licensed entities that the licensed entities do what they are supposed to do whether it is for you or us.

MR. BAILEY: Just thinking sort of off the top of my head, there could be requirements put on companies like that similar to what you do on the defect rules for non licensees. Saying that if a company is going to do -- be an internet broker or whatever the proper terminology is for that kind of operation, they must ensure the following things that the person offering it and so on. And perhaps place some requirements on them to

report if they find somebody offering stuff for sale who cannot provide the information that they are, in fact, a licensee of either the Commission or one of the Agreement States.

I think we can if we were sitting down talking about this for a couple of days, or if we make it a committee a couple of weeks, we could probably come up with some relatively simple requirements.

COMMISSIONER MCGAFFIGAN: My main goal in raising this question is number one, I think it is an important issue. But number two, I don't want you to be able in 2005 to use your 2000 slides -- I think it is an entirely legitimate issue.

We need to get some quick thinking about it and then we will come up with something that makes some sense. Doing something, even if it is not perfect, is better than doing nothing.

I am sort of where the Chairman was on reactors, the chairman was really our leader on reactor security back in the late 2001, early 2002 time frame. A lot of the February 25th 2002, order was Nils Diaz's work. I believe firmly -- I think he used to preach -- do it, it's going to be about 90 percent right. We will get the other 10 percent later.

MR. BAILEY: I have never done anything that I'm aware of that was perfect.

CHAIRMAN DIAZ: Shame on you. I'm going to give you the opportunity for some pre-concluding comments.

MR. O'KELLEY: Sounds great. A couple of things I probably just --

we are firmly in agreement that we probably need to re-look at the GAO characterization and classifications and we are willing to help and would love to be a part of that.

Two, that another area where I think everybody has kind of -- I don't want to say drop the ball, I think their priorities have shifted -- but we really need to get back to looking at the standing compatibility committee and getting that up and running and off the ground.

And lastly, an issue that I know you have heard, you have and you have heard, but, I hear, I hear, I hear every time we go to the meetings and I don't want the people that put me in this position to say I didn't voice their concerns that again we urge you to consider coming to the Organization of Agreement States meeting in October in Chicago, Illinois, the 13th through the 17th.

The majority of the membership would feel strongly that they would love to see a member of the Commission at this meeting. We are having -- EPA is putting on a workshop on disposal of low activity waste.

We are also having a member, a representative from the Department of Homeland Security who will be giving a presentation. We have been working real hard with other federal agencies to try to get them there as well, CDC, since they have expressed an interest in trying to help some of the state programs, now after throwing all their money at bio-terrorism -- so we are hoping to have them present too.

So I urge to you please make every effort to give it consideration.

CHAIRMAN DIAZ: All right.

Well, thank you very much and I just want to conclude by saying that we do value our relationship with you and cooperation and the work we do together we think it is important. And I think we are on the path to convergence ever better every day. With that, we are adjourned.