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UNITED STATES NUCLEAR REGULATORY COMMISSION
OFFICE OF FEDERAL AND STATE MATERIALS AND ENVIRONMENTAL
MANAGEMENT (FSME) PROGRAMS, PERFORMANCE AND PLANS

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MONDAY

MAY 7, 2007

1:30 P.M.

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The Commission convened at 1:30 p.m., Dale E. Klein, Chairman presiding

NUCLEAR REGULATORY COMMISSION

DALE E. KLEIN, CHAIRMAN

JEFFREY S. MERRIFIELD, COMMISSIONER

PETER B. LYONS, COMMISSIONER

1 PRESENTERS

2 MARTIN VIRGILIO, DEPUTY EXECUTIVE DIRECTOR FOR
3 MATERIALS, WASTE, RESEARCH, STATE, TRIBAL AND
4 COMPLIANCE PROGRAMS

5 CHARLES MILLER, DIRECTOR, FEDERAL AND STATE
6 MATERIALS AND ENVIRONMENTAL MANAGEMENT
7 PROGRAMS

8 JANET SCHLUETER, DIRECTOR, DIVISION OF MATERIALS
9 SAFETY AND STATE AGREEMENTS

10 DENNIS RATHBUN, DIRECTOR, DIVISION OF
11 INTERGOVERNMENTAL LIAISON AND RULEMAKING

12 LARRY CAMPER, DIRECTOR, DIVISION OF WASTE
13 MANAGEMENT AND ENVIRONMENTAL PROTECTION

14 JOSEPH HOLONICH, DIRECTOR, PROGRAM, PLANNING,
15 BUDGETING, AND PROGRAM ANALYSIS STAFF

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

CHAIRMAN KLEIN: Good afternoon. I always have to read this title to make sure that I get it completely accurate the Office of Federal and State Materials and Environmental Management Programs. We'll have to see about adding a little bit more titles on there.

We're looking forward to hearing an update on the status of your plans and programs. Obviously, it's been a busy year. I think this is the first meeting since you officially were reorganized late in '06 and so we'll hear about your accomplishments and what you have planned for the rest of year.

Obviously, the Agreement States has been a big program with Virginia, Pennsylvania, New Jersey, maybe changing their structures. In addition, the EPAC activities of accelerated produced materials as well as radium 226. So we look forward to hearing those updates as well as the standard things like rulemaking and other kinds of activities. Any comments before we get started?

COMMISSIONER MERRIFIELD: Mr. Chairman, this will be my last opportunity to take a whack at these guys. I say that with humor. I don't mean that at all. In fact, I would say in the various parts of our agency that have changed over the last 8 ½ years I have been on the Commission, I would have to say that this particular office is probably beyond the fact that it's new, but the pieces of it have been here. I think there has been as much change among these offices as anywhere else in the agency.

One area, you may know Mr. Chairman, that I took particular attention to as

1 a Commissioner was the issue of decommissioning. When I came on board, I
2 think we didn't have as a good handle on where we were and where we were
3 going with decommissioning as we do today. I have thanks for the staff, thanks for
4 Carl Paperiello and Marty and others, Charlie who have helped spearhead I think
5 some noticeable improvements in our ability to deal with legacy matters. I think it's
6 a real achievement for this agency.

7 I think it's an achievement for this country that we have been able to do a
8 better job of dealing with the back end. And I think as we as an agency prepare
9 ourselves for the possibility of new reactors down the road, I think it certainly
10 makes a much more coherent ability on our part to say that we can manage, not
11 only the front end, but we can manage the back end, too.

12 I think that certainly is something that may be in the minds of some
13 members of the public, but I think it's one given the achievements that we have
14 made in our oversight of utilities and of other licensees, I think those are some
15 issues we can certainly hopefully put to rest.

16 The other comment I would make, although it's not in the title of FSME, I
17 would note Marty Virgilio's title is inclusive of a whole lot of things including Tribal
18 matters. It has been very important for me that our agency do a better job in terms
19 of our engagement with Native Americans.

20 I think this office and its predecessor have put a lot of time and effort into
21 making that happen, into making a greater commitment to meeting the needs both
22 from an information standpoint as well as a government-to-government

1 relationship in terms of how we deal with Indian Tribes.

2 I appreciate the work that Marty has done and Janet and others to make
3 sure we have the level of engagement with the Tribes that we should. I think that's
4 another area of achievement for our agency that we had not done as well when I
5 got here. With that, I will stop and I'm sure I'll have some additional things to say
6 or ask in my time. Thank you.

7 CHAIRMAN KLEIN: Pete?

8 CHAIRMAN LYONS: I'll be happy to listen to the briefing.

9 CHAIRMAN KLEIN: Thanks. Marty?

10 MR. VIRGILIO: Thank you, Chairman and good afternoon,
11 Commissioners. This, as you've noticed, is our first-ever program briefing for the
12 new office and we're pleased to be here and Charlie Miller is going to do the
13 introductions of the staff that are here with us at the table, the division directors
14 and the folks that are supporting us. After the staff is finished, I have a few closing
15 remarks. With that, I'll turn it over to Charlie.

16 MR. MILLER: Thank you, Marty. Good afternoon. With me today at
17 the table are my division directors Janet Schlueter, Dennis Rathbun, Larry Camper
18 and Joe Holonich. Also, George Pangburn, my Deputy, Steve Reynolds who is
19 representing the Regions today from Region III and Ed Baker seated behind me
20 and will help support the briefing as needed.

21 Steve is the director of Region III's Division of Nuclear Materials Safety and
22 as I mentioned he is here representing all the Regions today and is available to

1 answer any questions that you might have about our Regional program.

2 I want to make a few opening remarks including my vision of what the
3 Office of Federal and State Materials and Environmental Management Programs
4 which we'll referred to as FSME for timeliness reasons for the rest of the briefing is
5 now and what it is to become.

6 Then I'm going to turn to my division directors to discuss some key
7 messages, recent accomplishments, challenges that they are facing as well as
8 highlight some of the products that expect to be completed in the next year or
9 issues that may require Commission decisions over the next 12 months or so.

10 I'll then summarize some crosscutting issues we face and give you my
11 impressions of how the 2006 reorganization that led to the creation of FSME is
12 working thus far. Next slide, please.

13 FSME came into being on October 1st of 2006, following the Commission
14 approval of the reorganization which was proposed in SECY-06-0125. The office
15 merged managers and staff from the former Office of State and Tribal Programs
16 with managers and staff from parts of the Office of Nuclear Material Safety and
17 Safeguards.

18 FSME has the responsibility for the entire STP's set of functions and
19 responsibilities as well as those that were in the two technical divisions of NMSS
20 that came along which were the Division of Waste Management and
21 Environmental Protection and the former Division of Industrial and Medical Nuclear
22 Safety.

1 We also pulled in about half of the program support unit from NMSS and
2 the uranium recovery licensing program that resided at NMSS 'Division of Fuel
3 Cycle Safety and Safeguards. We have three technical divisions and one fairly
4 small program support unit.

5 We've been in existence now for about seven months. Based on two full
6 quarters of operational data, I'm pleased to report that the new office is on
7 schedule to meet each of its performance metrics in the materials and waste
8 programs. While there have been some startup costs and standing up the new
9 organization, I'm pleased by what I see so far. Next slide, please.

10 The fundamental purpose of the reorganization was to enhance our ability
11 to meet changing demands of the external environment while maintaining our
12 ability to protect public health and safety in the environment. The continued
13 increase in the number of Agreement States clearly affects how we do our
14 business. We have Pennsylvania, Virginia, and New Jersey in various stages of
15 seeking Agreement State status.

16 This will further reduce the number of the country's specific materials
17 licensees under our purview, although at the same time we will be gaining
18 licensees based on the expanded definition of byproduct material as authorized in
19 the Energy Policy Act of 2005.

20 When the Commission approved the reorganization, it directed the staff to
21 ensure an effective organizational focus for the materials program and remain
22 engaged with the States to strengthen their roles in order to make for a truly

1 national program. As you'll hear in a few minutes, we believe we're working to that
2 goal.

3 We know that our effectiveness is directly linked to the performance of the
4 nuclear materials and waste programs conducted by our counterparts in the
5 Regions and by our regulatory partners in the States. While we have direct
6 authority for approximately 4,400 NRC materials licensees we realize that the
7 States regulate about 18,000 licensees. In order for our program to be successful
8 across the country, we need to work closely with the Regions and the States in all
9 aspects of a regulatory climate.

10 In my view, the reorganization has put us in the good place to do that. We
11 now draw from the operational strength of the former Division of Industrial and
12 Medical Nuclear Safety which together with the Regions had the programmatic
13 knowledge and operational experience of regulating the NRC's medical, industrial
14 and academic use licensees. We've merged with the former Office of State and
15 Tribal Programs which was the agent through which the NRC leveraged the vast
16 regulatory knowledge of the States.

17 By including the Division of Waste Management and Environmental
18 Protection, we have the opportunity to expand the interactions with the States on
19 decommissioning and waste issues. For example, the staff has recently initiated
20 an effort and cooperation with the States to share decommissioning experiences
21 by including information about complex decommissioning sites that are under
22 State jurisdiction on the NRC decommissioning website.

1 In the NRC's annual decommissioning report and in the staff's annual
2 financial assurance paper, the intent of this effort is to improve the
3 decommissioning process and provide a national perspective on
4 decommissioning. And now I'd like to start the series of Division presentations
5 beginning with the Division of Materials Safety and State Agreements. Janet?

6 MS. SCHLUETER: Good afternoon. The Division of Materials Safety
7 and State Agreements is a blend of staff and managers from the former STP and
8 IMNS. Most, but not all, of our accomplishments, program initiatives and future
9 challenges have stemmed from issues and activities that originated in those
10 offices. I greatly appreciate the efforts of my management team since last fall in
11 the reorganization.

12 As division managers, we routinely look for ways to blend the different
13 cultures from the offices and facilitate knowledge management. For example,
14 when assigning work we often assign a more senior staff person from one of the
15 former offices with a more junior staff person from one of the former offices as
16 well.

17 We believe that the primary objectives of our division are to continue to
18 foster Federal and State relations, increase national accountability and security of
19 sources, and ensure the safe use of radioactive material through risk informed,
20 effective and efficient regulatory programs. I'll expand upon each of these points
21 throughout the slides. Slide seven, please.

22 The division continues to work closely with its stakeholders to implement a

1 comprehensive security program for certain radioactive materials. For example,
2 we have sponsored security training for approximately 200 NRC and Agreement
3 State personnel.

4 We regularly conduct teleconferences with the States on issues of mutual
5 interest and have developed innovative communication tools. For example, we
6 developed the Increased Control Toolbox. The toolbox is a password protected
7 website where NRC and Agreement State personnel can access valuable
8 information. We also established the IC Chat Room where regulators exchange
9 information routinely.

10 Currently, we have over 400 members of the IC Toolbox. To provide an
11 overall perspective of our licensing and inspection caseload, I offer the following
12 data for this fiscal year. The NRC Regions are expected to conduct about 1,500
13 materials inspections. The division and Regions are expected to complete about
14 3,200 materials licensing actions.

15 And finally, since last March there have been about fifty sealed source and
16 device review actions. Each year our caseload budget assumptions take into
17 account factors such as new Agreement States and NARM licensees in non-
18 Agreement States that will transfer to the NRC in phases.

19 The division also assists the Regions through incident response, event
20 review and analysis and enforcement coordination. Since the last briefing there
21 have been over 360 event notices resulting in abnormal occurrences, reports to
22 IAEA's International Nuclear Events Scale or escalated enforcement actions.

1 On a related note, we are working to address your concerns regarding the
2 recent Agency Action Review Meeting staff paper and we plan to discuss these
3 matters during the May 30th AARM Commission briefing. Next slide, please.

4 As you are aware, Minnesota is our newest Agreement State. Our next
5 prospective Agreement State is Pennsylvania. We will soon be forwarding a paper
6 to the Commission requesting approval to publish our draft assessment of the
7 Pennsylvania submittal for public comment. We'll consult with the Commission
8 later this year on our final recommendation.

9 Virginia is expected to submit its draft submittal to the Commission in the
10 summer some time and New Jersey is expected to submit its draft submittal in
11 August. We stand ready to review these submittals. We continue to identify new
12 initiatives and opportunities to coordinate with the States.

13 State representatives participated in various activities such as the Tritium
14 Groundwater Task Force, energy policy activities including rulemaking,
15 pre-licensing guidance development and inspection best practices. Agreement
16 State personnel currently participate in approximately 20 NRC initiated working
17 groups. To facilitate their participation, we worked with Agreement State
18 representatives and we developed Management Directive 5.3 specifically for this
19 purpose.

20 In addition, we conduct monthly calls where all 50 states are invited to
21 discuss issues of mutual interests, such as NARM, increased controls and other
22 security matters, IMPEP related activities, decommissioning and emergency

1 preparedness.

2 Over the past year we've also written and distributed over 120 letters to
3 either Agreement States or all 50 States including the governor appointed State
4 Liaison Officers. These letters are available on our website which has at times
5 received over 300,000 hits per month.

6 The Integrated Materials Performance Evaluation Program continues to be
7 a highly effective process and a credible program for reviewing both the
8 Agreement States and the Regions. IMPEP is also dynamic in that it evolves to
9 address new program areas such as increased controls. Since last March there
10 have been over 30 IMPEP reviews and meetings in addition to the management
11 review board meetings where final agency decisions are made.

12 We also routinely receive positive feedback from Agreement State
13 participants who as IMPEP team members oftentimes identify best practices of
14 other States or the Regions and upon return home incorporate those best
15 practices into their own programs.

16 Finally, I would like to give special recognition to the States of Florida,
17 Massachusetts, Texas, Kansas and Oklahoma who routinely support the IMPEP
18 program. I would also like to give special recognition to the staff's Advisory
19 Committee on the Medical Uses of Isotopes. The committee continues to be a
20 valuable source of medical expertise and advice to the staff and our State
21 partners. We look forward to our next committee meeting scheduled for June 12
22 and 13 here at headquarters. Information on ACMUI is now on our website. Next

1 slide, please.

2 Headquarters is working with the Regional offices in all States to develop a
3 comprehensive and phased approach to implementing NRC's authority over
4 NARM. We appreciate the Commission's timely review and approval of the rule
5 and the transition plan. We've also established a NARM website to facilitate
6 communication with our stakeholders.

7 We continue to work with individual Agreement States regarding their
8 governor certification as required by the Act and we expect all Agreement States
9 to certify in time. As of today, 31 of the 34 governors have certified. We will
10 continue working closely with the Agreement States, other Federal agencies and
11 our international partners to keep legitimate materials use within reach of users
12 while maintaining appropriate and risk informed levels of security.

13 We recently posted information on the NRC website regarding our
14 nationwide efforts on source security and we'll continue to work with the
15 Agreement States to implement any Commission direction on these important
16 matters.

17 Finally, we continue to support Customs and Border Patrol by having
18 source data team member available 24/7 to address CBP inquiries concerning the
19 authenticity of licenses, possession authorization and use locations or shipments
20 containing radioactive material. Our State partners also periodically receive such
21 calls.

22 NRC will continue to maintain its focus on safety and support to Agreement

1 States while making fact of life budget and program adjustments to ensure that our
2 mission is met. For example, the NARM rule results in a new source of NRC
3 licensees; however, the number of NARM licensees is not uniform across the
4 Regions, particularly in light of the increasing number of Agreement States
5 forecasted in Region I in the near future. We adjust our budgets accordingly.

6 Next slide, please.

7 As part of implementing our NARM authority, work is underway to
8 coordinate with non-Agreement States that are in various stages of either entering
9 into or applying for an agreement or deciding whether to seek an agreement. For
10 example, since last August we have held discussions with the States of Missouri,
11 Hawaii, Alaska, West Virginia, Connecticut, Michigan and Montana to discuss the
12 process of becoming an Agreement State and the potential impact on their current
13 licensees.

14 These efforts will help increase the likelihood of high-quality State
15 submittals and enable a more efficient NRC review process. We're also
16 coordinating with non-Agreement States to identify and communicate with their
17 NARM licensees regarding filing deadlines and transition issues since authority will
18 transfer from the State to the NRC.

19 We must also consider the potential impact of NARM licensees located in
20 Rhode Island in the event that the State returns its agreement this summer or
21 elects not to submit the governor certification to exercise authority over NARM.
22 Our goal either way is to minimize the impact on all parties.

1 Finally, DHS's Domestic Nuclear Detection Office plans to create a
2 database of NRC and Agreement State licensees in support of their national
3 nuclear detection effort. We are in active dialog with DNDO and the Agreement
4 States on this initiative. We will continue to support DNDOs effort while helping to
5 address State concerns such as resources and technological requirements and
6 information protection and security. And now I'd like to turn things over to Dennis.

7 MR. RATHBUN: Thank you, Janet. The Division of
8 Intergovernmental Liaison and Rulemaking is also a blend of managers from the
9 former Office of State and Tribal Programs and the NMSS Division of Industrial
10 and Medical Nuclear Safety.

11 The current primary objectives of the division are divided into two
12 rulemaking branches and one branch covering intergovernmental liaison activities
13 with States, Federal agencies and Tribal governments. Our typical rulemaking
14 inventory consists of 20 active rulemakings per year and around eight petitions
15 under review which we work in coordination with OGC, ADM, NMSS, NSIR and
16 NRR.

17 In addition to the rulemakings, our major program goal is to maintain
18 effective communications with the State, Federal entities and Tribes. The division
19 is strengthening communications with the States and particularly non-Agreement
20 States on issues involving materials, security and reactor programs. We hope to
21 coordinate our communication with our Federal government partners such as
22 EPA, DOE, OSHA and on issues that are crosscut multiple NRC programs.

1 We'll continue to strengthen our interactions with Tribal governments as
2 well. We also will handle allegations for FSME and NMSS which we coordinate
3 with Regional staff, the Office of Investigations, OE and State personnel through
4 transfer through Agreement State allegations programs.

5 I'm pleased to report that in FY2006 and early FY2007 we have met all of
6 our timeliness metrics in this activity. May I have the next slide, please?

7 There are a number of actions that came out of the Energy Policy Act of
8 2005. Examples include the final rule on Part 656 on the secure transfer of
9 nuclear materials which was published on January 24, 2007; a rulemaking for Part
10 652 on fingerprinting and criminal history checks; the NARM final rule which was
11 provided to the Commission in April 2007 and our interaction with Research in
12 coordination with the National Academy of Sciences on a study reviewing the
13 current industrial research and commercial uses of radiation and identification of
14 technically and economically feasible replacements for sources that pose a high
15 risk to public health and safety in an accident or terrorist attack.

16 The DILR staff is also coordinating the issuance of guidance for inspections
17 and licenses to address NARM. One of the most significant actions from the
18 Energy Policy Act was the Radiation Source Protection and Security Task Force
19 led by NRC and comprised of Federal agencies and State organizations to
20 evaluate the security of radiation sources in the United States and to provide
21 recommendations to the Congress and the President on ensuring the security of
22 these sources.

1 I would particularly like to thank Commissioner Merrifield for his leadership
2 in this activity. Another accomplishment was the issuance of a final rule on the
3 National Source Tracking System in November 2006 under a public health and
4 safety basis. Those were some of our rulemaking accomplishments. Now I would
5 like to talk about some of our liaison activities. Next slide, please.

6 In addition to our liaison with the States, we also worked closely with Tribal
7 governments. I would like to cite a few examples. On October 24, 2006, the
8 Prairie Island Indian community met with the NRC concerning the Prairie Island
9 reactor activities and entered into a protocol agreement with Region III to observe
10 security inspections at the plant. We also met with the Yukon River Intertribal
11 Watershed Council, an organization providing technical and coordination
12 assistance to the Tribes in the Yukon River watershed.

13 In February 2007, the staff met with Robert Holden, Tribal Homeland
14 Security and Emergency Management Coordinator of the National Congress of
15 American Indians. We discussed ways that we could increase our outreach with
16 Tribes and provide greater inclusiveness of Tribal representatives on nuclear
17 issues affecting Tribes. DILR staff participates in and maintains cognizance of
18 Tribal interactions on Yucca Mountain.

19 Interactions with the Shoshone Tribe on their status as an affected Tribe
20 under the Nuclear Waste Policy Act have taken place, as well as DILR staff
21 participation in DOE's Tribal workshop sponsored by the Office of Civilian
22 Radioactive Waste Management.

1 Returning to our interaction with the States, we feel that it is essential and
2 we maintain effective communication with States on Commission decisions such
3 as petition decisions, issuance of rules and orders, and so forth and that we
4 continue to enhance our coordination and cooperation with States related to
5 emergency preparedness issues. Next slide, please.

6 Our division challenges are several. There are several petitions which we
7 would like to note as presenting particular challenges to the DILR division. For
8 instance, there is a petition for rulemaking submitted by the Organization of
9 Agreement States in November 2005 which requests amendments to the
10 requirements under sections of Part 34 for surveillance of the restricted and high
11 radiation areas at temporary industrial radiography job sites, known as the
12 two-person rule and also to training requirements for radiographers and their
13 assistants.

14 The second petition is one in which the petitioner requests that the
15 Commission revoke the NRC's patient release criteria contained in 10CFR35.75
16 insofar as it allows patients to be released from radioactive isolation with more
17 than the equivalent of 20 millicuries of Iodine 131 in their systems.

18 FSME and NRR are the two offices primarily with responsibility for
19 rulemaking in coordination with OGC, NSIR, ADM, OE, NMSS and the New
20 Reactor Office carried out a common prioritization of approximately 80
21 rulemakings for FY2008-2009 which will be pursued dependent upon the available
22 resources.

1 Other challenges include the outreach for the Galena Reactor which
2 includes the New Reactor Office, NRR, NMSS, Research and OGC and the Parts
3 71, 73 advance notice of nuclear waste shipments outreach which also includes
4 NMSS and NSIR. Next slide, please.

5 The next year promises to be a busy one for the division. This slide shows
6 several of our major activities including the NSTS currently including IAEA
7 categories one and two. FSME is collecting data for category 3.5 sources to
8 inform the rulemaking and evaluate regulatory alternatives for including category
9 3.5 data in NSTS.

10 DILR will work with the division of Waste Management Environmental
11 Protection following the Commission's policy decision to complement the in-situ
12 leach proposed rulemaking as expeditiously as possible during the forthcoming
13 year. We will continue coordination with the States and Federal agencies.

14 We will increase coordinated outreach with Tribal governments. We will
15 continue outreach with individual Tribal governments and we will increase
16 interactions with the National Congress of American Indians attending and making
17 presentations at Tribal gatherings. DILR will coordinate the delivery of guidance
18 associated with the rulemakings to allow for timely issuance. That's a list of some
19 of the items that DILR will be addressing in the upcoming year.

20 Our next speaker is Larry Camper, Director of the Division of Waste
21 Management and Environmental Protection.

22 MR. CAMPER: Slide 18, please. As a result of the reorganization,

1 the Division of Waste Management and Environmental Protection has
2 incorporated Uranium Recovery into this diverse program, which includes
3 decommissioning, environmental protection, performance assessment, waste
4 incidental to reprocessing, and low level waste. This allows us to combine skills
5 that are common to the division with those of Uranium Recovery in a more efficient
6 manner.

7 In FY06 we consolidated the decommissioning of all power test and
8 research reactors and uranium recovery facilities undergoing decommissioning,
9 both Title 1 and Title 2 sites within the comprehensive decommissioning program.

10 In FY07 and beyond we will work with the Agreement States to include
11 more information on decommissioning facilities in their jurisdictions within the
12 annual report. Nine different companies have expressed their intent to submit now
13 14 applications, new license applications for in-situ leach facilities and/or
14 conventional facilities in FY08 and '09.

15 Currently we have resources and a strategy to conduct the licensing
16 evaluations. We are looking at ways to facilitate the development of
17 environmental impact statements including the use of a generic environmental
18 impact statement for uranium recovery licensing supplemented by site specific
19 environmental assessments to improve our efficiency and address limited
20 resources.

21 In addition in FY08 and '09, we're seeking a level of resources to fully
22 complete environmental reviews. The environmental workload --

1 COMMISSIONER MERRIFIELD: Mr. Chairman, for just a second, I
2 think this is a noteworthy development. One of the things that the EDO's office
3 conducts on the NRO side of the house is we keep a list now of all the utilities that
4 have an interest in submitting COL applications and having read this, getting
5 prepared for the briefing today, it strikes me that we may have an analog listing of
6 mining companies that are interested in these types of facilities so that the
7 Commission can keep track of that on a more regularized basis.

8 MR. CAMPER: I'll respond to that a little bit later. The environmental
9 workload has increased significantly due to additional licensing actions that were
10 not originally forecast for the fuel cycle decommissioning and low-level waste area.
11 To best address this issue where attempting to establish rules of engagement to
12 guide all of our environmental work and develop unique approaches to maximize
13 the number of environmental reviews that we can complete.

14 Although low-level waste disposal is safe, in recent years there's been a
15 great deal of interest in low level waste disposal by the Government Accountability
16 Office, National Academy of Science, and the Advisory Committee on Nuclear
17 Waste. Considering these interests and stakeholder reviews, staff is completing a
18 low-level release programmatic strategic assessment to prioritize our actions for
19 the next several years in order to maintain a reliable, stable and adaptable
20 regulatory framework that ensures safety and security of low-level waste disposal.
21 We'll present that strategic assessment to the Commission in June of this year.

22 We have successfully completed two consultation reviews resulting in the

1 Department of Energy completing two waste determinations; one for disposal of
2 salt waste at the Savannah River site and one for closure of the Tank Farm Facility
3 at the Idaho National laboratory. From these reviews and other interactions with
4 the Department of Energy, we have identified areas that could improve the
5 consultation progress and we're working with DOE to that objective.

6 Another key activity that staff is initiating is our monitoring activities. We
7 started monitoring at the Idaho National Laboratory in April and monitoring at the
8 Savannah River site will commence near-term. Next slide, please.

9 The next couple of slides I'd like to cover our accomplishments in the
10 division. During March 2006 to April 2007, we completed actions at eight sites.
11 We approved the Quehanna Decommissioning Plan, and acted on 10 license
12 amendment requests supporting decommissioning of license sites. For uranium
13 recovery during this period, we completed 27 major licensing actions.

14 In addition, we approved the RMD license. This unique license allows
15 uranium removal from community water systems and would ensure that the
16 removed material is disposed of in an environmentally safe manner. We
17 completed the development of NUREG-1814, our bi-annual NUREG report on the
18 status of the decommissioning program. We also completed a two-year effort to
19 update NUREG-1757, the consolidated decommissioning guidance.

20 In completing the annual decommissioning report, we coordinated with the
21 Agreement States to include information on their decommissioning programs. We
22 successfully completed the consolidation of decommissioning activities into the

1 comprehensive decommissioning program. These activities included power
2 reactors, research and test reactors and uranium recovery facilities. This effort
3 should ensure that decommissioning policy and technical decisions are applied
4 consistently and allows efficient use of our skills common to decommissioning and
5 uranium recovery. Next slide, please.

6 We completed the final environmental impact statement for the United
7 States Enrichment Corporation Gas Centrifuge Enrichment Facility in FY06 and
8 initiated major environmental impact statements for the Sequoyah Fuel
9 Corporation and Shieldalloy sites. In its role as a cooperating agency, the NRC
10 staff provided significant support to DOE's draft environmental impact statement
11 for the West Valley site.

12 Additionally, the staff completed a number of complex environmental
13 assessments to support licensing and rulemaking activities such as the NARM
14 rulemaking. Staff is completing the low-level waste strategic assessment cited
15 earlier and completed several activities related to provisions in 10CFR20.2002 for
16 alternate disposal of certain variant low-level waste.

17 Staff also provided its annual review of the need for rulemaking and/or
18 guidance on low level waste storage to the Commission noting that an update was
19 needed to ensure that NRC guidance for extended storage of low-level waste is
20 current. Staff is currently performing a gap analysis on existing low-level waste
21 guidance particularly as it relates to Class B and Class C low-level waste.

22 In the area of waste incidental to reprocessing, staff accomplishments

1 included: issuing a request for additional information related to DOE's draft waste
2 determination for closure of tanks 18 and 19 at the Savannah River site, issuing
3 the technical evaluation report to the Idaho National Laboratory for its Tank Farm
4 Facility, and issuing the draft Standard Review Plan related to DOE waste
5 determinations.

6 More recently staff completed plans for monitoring DOE's disposal actions
7 for incidental waste at the Savannah River site and the Idaho National Laboratory.
8 We shared these plans with DOE and respective State agencies. We participated
9 in multiple international activities including the Joint Convention on the Safety of
10 Spent Fuel Management and Radioactive Waste Management and we
11 represented the United States at the International Atomic Energy Agency's Waste
12 Safety Standards Advisory Committee in order to influence IAEA waste safety
13 standards for consistency and conformity with U.S. regulations, guides and
14 common safety practices. Next slide, please.

15 In terms of challenges, we have been interacting with the EPA and States
16 at many of our decommissioning sites. Sometimes this has resulted in our
17 reaching consensus, such as at those sites that fall under the EPA NRC MOU.
18 While at other sites, States and the NRC staff not always reached agreement on
19 technical or policy issues. We also interact with U.S. Army Corps of Engineers on
20 a number of sites that involve materials from the FUSRAP program, which is the
21 Formerly Utilized Site Remedial Action Program.

22 For waste incidental to reprocessing activities, NRC's consultation and

1 monitoring roles with DOE will continue to evolve over the next year. Alignment
2 with States and other regulators is a challenge, especially with respect to sites that
3 opt to decommission via the restricted release pathway. We currently have
4 several facilities that expressed an interest in this option and as you know for at
5 least one of those sites the State has requested a hearing and that request has
6 been granted.

7 In addition the State has petitioned for rulemaking to preclude the use of
8 this option. Because the issues associated with these sites, they will require
9 significant staff time and will be the focus of congressional and media interests.

10 In completing the low-level waste strategic assessment we considered
11 current issues in the national low-level waste disposal system as well as
12 stakeholders suggestions for NRC's low-level waste program. However, the
13 national system is complex and evolving. Issues may arise over the next few
14 years that were not considered in the strategic assessment. NRC will remain
15 abreast of developments in the national and international low-level waste
16 programs and periodically updated its strategic planning for its low-level waste
17 regulatory framework. Next slide, please.

18 In terms of the upcoming year there are some issues that will come before
19 the Commission for decisions or information. Currently the staff is engaged in two
20 high priority rulemakings: the in-situ leach rulemaking was designed to reduce dual
21 regulation of groundwater at in-situ leach facilities; however, as the Commission is
22 aware, we recently held meetings with the EPA and the National Mining

1 Association on this topic and we are currently awaiting a Staff Requirements
2 Memorandum for a path forward.

3 On the other hand, the legacy sites rulemaking would establish
4 requirements that should facilitate decommissioning in the future and lessen the
5 likelihood of legacy sites. As Dennis mentioned in his remarks a proposed rule is
6 scheduled to come before the Commission on September 30th.

7 As I mentioned earlier, we are examining the use of a generic
8 environmental impact statement for uranium recovery licensing reviews. However,
9 existing uranium recovery licensees would have to bear the cost of the generic
10 environmental impact statement because of the generic nature of the work.

11 In essence, current licensees would be paying for an activity that would
12 support their future competitor. Therefore, the staff will seek Commission approval
13 to take the generic environmental impact statement off the fee base and instead
14 recover the cost through the surcharge assessed to all NRC licensees paying Part
15 171 fees.

16 We are working with the Department of Energy to implement an enhanced
17 consultation process to ensure continued success in fulfilling the agency's National
18 Defense Authorization Act responsibilities. However, staff believes the changes to
19 the current consultation process can be accommodated within the scope of the
20 Commission approved implementation plan.

21 Earlier this year, staff provided information to the Commissioners'
22 assistants regarding progress on the draft, final Standard Review Plan as well as

1 the development of the monitoring plan. Staff will continue to communicate with
2 the Commission on these issues in a timely manner. That completes my remarks
3 for the division. I'll turn the program to Joseph Holonich.

4 MR. HOLONICH: Thank you, Larry. Can we go to slide 24, please?

5 The Program, Planning, Budgeting, and Program Analysis staff consists of staff
6 and managers who are responsible for the support functions in FSME. Because of
7 that, many of our significant accomplishments do not relate directly to the FSME
8 mission; rather, PBPA does the things that allow the technical experts to focus on
9 our regulatory mission.

10 The critical mission objectives that PBPA has include effective program
11 support. PBPA is responsible for providing the technical divisions the support they
12 need to get their jobs done. We take care of those things that keep the office
13 functioning while the technical divisions work on mission related jobs. Some
14 examples include space, contract funding and Budget coordination that we do for
15 the office.

16 In addition, we handle Workforce management. As part of our support
17 effort, PBPA works with HR and the divisions to effectively manage our work force.
18 This includes hiring new staff and ensuring the divisions have what they need to
19 formalize existing staff.

20 Finally, we're working with the office to make sure that we have operational
21 stability and efficiency. PBPA is looking for ways that we can put together the
22 office to make sure we have the framework in place and I'm going to discuss

1 shortly what some of the things we're doing to make sure the office has its
2 framework and its operational capabilities in place. Next slide, please.

3 Some of our accomplishments include an enhanced appraisal process. In
4 the past year, PBPA then in fact PMDA for NMSS took the lead on a number of
5 personnel activities. We led the effort to rewrite first line Supervisor Performance
6 Plans to tie them more closely to the SES executive core qualifications.

7 In addition, PMDA developed the web-based appraisal writing support
8 system that helped supervisors do appraisals more efficiently. This project was
9 well received by other headquarter offices and was adopted by many of our sister
10 offices in the past appraisal cycle. In fact, in the past week HR and ADM have
11 awarded the person who developed the system an employee suggestion award for
12 the improvement that it's had in the appraisal process.

13 In addition, we're looking at ways to improve our business practices and
14 PBPA has developed an automated contract funding management process that
15 contemporaneously tracks office funds in real time. This allows for full funding of
16 projects across the office while identifying excess funds that can be reallocated to
17 unmet needs as expediently as possible.

18 Finally, as I noted, we're looking at the operation of the office and
19 supporting that. Since the reorganization, we've taken the lead on a number of
20 different activities. One example includes getting the necessary delegation of
21 authority memos issued to Charlie so that he has the authority to do the things that
22 the office needs to do. This includes not only the licensing work that the office

1 does, but also the operational aspects such as contract authority to be able to sign
2 contracts and memorandum of understanding with other Federal agencies.

3 Another example that we've worked on in the operations area for the office
4 is getting the procedures in place, the office operating procedures. This effort has
5 included PBPA leading a working group of the other divisions to review the old
6 NMSS and STP operating procedures; making decisions about what to do with
7 those procedures to determine which ones we want to keep, which ones are not
8 valid and which ones we don't need any more and begin the process of updating
9 them so that FSME has an operational framework that it can use as we go into our
10 next fiscal year. Slide 26, please.

11 Like the technical divisions, PBPA has a number of challenges and
12 probably the two biggest challenges we face is getting the NSTS and Web-based
13 licensing system completed. We've had several bumps in the road related to
14 web-based licensing that's caused us to extend the original completion date
15 beyond what we anticipated.

16 With respect to NSTS we currently receive approval from OIS to begin
17 full-scale development. This approval allows our contractor to work on those
18 modules that do not contain security aspects of the design and essentially that's all
19 of the modules related to the system other than three of them which have the
20 design security aspects in them. We're moving forward and beginning full scale
21 development on the NSTS.

22 In addition, we have the responsibility of incorporating FISMA requirements

1 into FSME as well as supporting NMSS on its work on FISMA for computer
2 systems that it has. We're working to ensure that we incorporate FISMA into
3 NSTS and web-based licensing as we build those systems. Plus we're working
4 with OIS to get FISMA addressed in our legacy systems. This is a very complex
5 and difficult issue.

6 We have evolving requirements from OMB. We have several first of a kind
7 activities and there's a finite pool of resources in the agency that are available to
8 support us in the FISMA area and that resulted in the fact that progress on this
9 area has not been as fast as we would have liked to have seen.

10 Another area we have is in the Administrative support. At the time of the
11 reorganization, the Commission did not approve additional resources for
12 administrative support so NMSS and FSME looked at opportunities to leverage
13 existing resources in those two offices. Our physical adjacency with NMSS right
14 now allows this to work for certain functions. However, when NMSS moves to
15 Executive Boulevard it is going to be more difficult for us to share administrative
16 support resources in the future.

17 Although we look for ways to better scope our work and for ways we can be
18 more efficient at what we do, the separation of the two offices will significantly
19 increase our challenge especially as we continue to get additional work. For
20 example, we're now looking at knowledge management and trying to find
21 resources to make sure that we give this important area all of the support it needs.

1 Finally the consolidation of FSME physically is what we're supporting.
2 Once we do that and get FSME on to a single floor in Two White Flint it's going to
3 significantly improve our ability to complete mission objectives in a more effective
4 and efficient manner. The communication and overall organizational cohesion
5 between the divisions will allow for quicker turnaround and response time to
6 decision-making.

7 Since ADM announced the space plans in April we have been working with
8 Tim Hagen and the ADM staff, the other three FSME divisions and representatives
9 from NTEU to allocate space, assign offices and make sure that the moves are
10 effective to get us consolidated in Two White Flint.

11 Looking at the upcoming year, I think as noted above addressing FISMA for
12 the new and legacy systems is one of the biggest challenges we face. There are
13 finite resources available and requirements we face make it one of the more
14 challenging things that we have in front of us. My staff and I are working closely
15 with OIS to address this challenge for both the systems we're developing as well
16 as the legacy systems.

17 The second challenge we have and we're looking toward in the upcoming
18 year is getting the two systems NSTS and web-based licensing moving. There
19 have been difficulties with these new first of a kind systems that have made
20 progress slower than we would have liked.

21 In the area of budget and staffing, with the FY07 continuing resolution and
22 the FY08 OMB pass backs and many other factors the office faced, we put a lot of

1 effort into effectively managing our contract dollars and FTE. Like many offices,
2 we're managing our resources within this dynamic environment; however, the
3 changing environment makes it more difficult than if we had a set budget and
4 known resource allocations at the beginning of the fiscal year.

5 Finally, the supporting key functions in getting business practices in place is
6 the other area we're looking for in the upcoming year. We need to make sure the
7 office has what it needs to operate. With the limited resources we have to
8 prioritize what must be done, versus what we would like to get done. Making sure
9 we get the office business practices done while still completing needed work gives
10 us yet another challenge for the future. That completes my remarks. And with
11 that, Charlie Miller will provide an office summary and closing remarks.

12 MR. MILLER: Thank you, Joe. May I have slide 28, please?
13 You've heard several times about how we've been asked to make some tough
14 budget decisions. The FY08 OMB pass back hit a number of offices hard. FSME
15 was not excepted. We took reductions in our materials programs, our
16 decommissioning program and our rulemakings. Our internal stakeholders were
17 also impacted.

18 To cite a few examples, we've had to revisit our rulemaking prioritization
19 tables with NSIR, NRR and others and make sure that our assumptions and
20 schedules are internally aligned.

21 In FY08, we will temporarily have to build a materials licensing backlog for
22 the first time in about 15 years. This means that we won't be able to complete as

1 many cases as we will receive and that our timeliness metrics will likely be
2 compromised. We hope to fully restore these resources in FY09 in order to meet
3 our metrics.

4 We'll also need to find innovative solutions in how we do our environmental
5 reviews. Perhaps through the use of generic environmental impact statements for
6 uranium recovery licensing; you heard that from Larry.

7 We realize that FSME is not the only piece to the NRC puzzle and that
8 budget decisions need to be made in a few months from the perspective of what is
9 best for the agency and not any one program office. FSME will let the
10 Commission know immediately if key assumptions or external factors begin to
11 perturb our ability to achieve our basic mission.

12 In a limited resource environment, success requires organizational
13 cohesion and close collaboration with internal and external stakeholders. In fact,
14 the 6/16/06 SRM that approved the reorganization identified this. It said that the
15 new office would bring more focus to the concerns of the Agreement States and
16 elevate the visibility of State and Tribal programs to a major program office level. I
17 view this as one of my most important tasks.

18 I appreciate the talents that all of the former STP and NMSS organizations
19 have brought to the new FSME. Joe spoke about the challenges his leaner
20 support staff face. But I feel we have largely made it work in some ways due to
21 the collaborative efforts of FSME and NMSS support personnel working together.
22 I think the decision to expedite the consolidation of FSME on the 8th floor of Two

1 White Flint will greatly improve our efficiency, effectiveness and organizational
2 cohesion.

3 I want to touch on the issue that is very important to all of us. FSME
4 includes about 180 staffers from various technical and administrative disciplines.
5 These are persons in various stages of their careers. As our senior staff moves
6 on, we need to share the expertise and best practices with those who follow in
7 their footsteps. This is what many in the agency refer to as knowledge
8 management.

9 I fully endorse this principle and consider it essential as a survival technique
10 in today's staffing environment. We must continue to replenish our talent pool and
11 refresh our technical and administrative expertise. Next slide, please.

12 I close with a few questions which I have been thinking about since October
13 of last year. Is the reorganization working like we imagined it would? For the most
14 part, I say, "Yes, it is." We're working well with both the Agreement and
15 non-Agreement States and continuing to work closely with our Regional partners.

16 We also continue to work effectively with groups like ACMUI, ACNW and
17 with other Federal agencies to bring about program results. We've also been
18 successful in assuring continuity in our support of a variety of international
19 programs.

20 What has really changed? I think that our way of thinking is beginning to
21 change to reflect a national perspective in all the areas of responsibility that are in
22 FSME. The managers and the FSME staff are now thinking about the impact of

1 our programs on States, Tribes and Regions whereas last year we may not have
2 had such a broad perspective universally. I think this will have a payoff in terms of
3 a national program performance in the future.

4 Where do we need to improve? I think we still have a lot of work to do in
5 some areas. I would like to see success in all aspects of our information
6 technology systems. We are working to establish a common set of internal office
7 procedures to govern routine business practices. We must continue the efforts we
8 have started to get our policies and procedures in place and get our internal ways
9 of doing business more harmonized across the divisions. I'm confident that we
10 will.

11 The melding of the cultures from the former STP and NMSS is proceeding
12 in a positive way. The recent decisions on space will allow FSME to be
13 consolidated this summer and that progress will be achieved I feel in the near
14 future. This concludes my office's presentation and I'd like to turn it back over to
15 Marty for some final remarks.

16 MR. VIRGILIO: Thank you, Charlie. As you've heard today, we've
17 got a lot of work on our plate. Overarching this as you heard, we've got a vision
18 about moving the organization toward a national materials program in conjunction
19 with working with our State partners and our internal partners as well. We really
20 appreciate the support that we've received from the Commission over this past
21 year.

22 I'd also like to thank the staff because we really appreciate the work that

1 they have done. They've continued to produce quality products throughout this
2 reorganization. This reorganization is not immune to what you suffer with any
3 reorganization; we've had disruptions, we've had changes and we've had
4 challenges. The staff has worked their way through that and as I said continue to
5 deliver.

6 So with that, I thank you all very much for allowing us to present the
7 program and we're ready to answer any questions you might have.

8 CHAIRMAN KLEIN: Thank you for a very good presentation. It's
9 clear that a lot of our efforts and certainly in the press focus on the nuclear
10 reactors and the new reactors that our coming and so I think this presentation
11 demonstrates that there's other parts of the NRC that are certainly equally
12 important. To begin our questioning, Commissioner Merrifield.

13 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman. I'll
14 pickup where I left off and talk to Larry a little bit. On slide 18, you mentioned that
15 there are nine companies that expressed an intent to apply - you're now saying 14
16 ISL licensing either in-situ leach or conventional uranium mining. Clearly, that is
17 closely connected with the dramatic increase in the price of uranium over the
18 course of the last year.

19 You outlined the idea of developing a generic environmental impact
20 statement, particularly as relates to ISL mining which I think makes a lot of sense.
21 My only concern and perhaps it's caution, that we not too narrowly focus that GIS
22 in order to make sure that the scope is such that we can address the majority of

1 potential sites that may be out there. I fear that if we tried to tailor it too close, it
2 may not have the broad reach that would otherwise be useful for us in the long
3 run.

4 I also appreciate the fact you're talking about dealing with issues of
5 requiring existing licensees to pay for that generic environmental impact
6 statement. I've long felt that while we have a lot of unfortunate burdens that we
7 place on our licensees because we are a fee based agency, I think in particular it
8 has been difficult for some of the folks who are involved in mining. I think the
9 direction you all are thinking about in terms of taking them off the fee base is
10 certainly something I would want to support.

11 I did have that one suggestion that you said you were going to get back to,
12 but I didn't hear it. That is how are you going to help us track these on a more real
13 time basis so the Commission can have some understanding about where it's
14 going.

15 MR. CAMPER: Let me say that I share clearly the concern that you
16 just expressed about the GEIS. In structuring it we do want it to be broad enough
17 to capture the technology that is being used, the geographical consideration, the
18 groundwater consideration and the like because ultimately we'll have to do either
19 site specific EAs preferably or site specific EISs as a function of how well bounding
20 that GEIS is. When we do that, we'll try to write it as broadly as possible with that
21 in mind. Good point.

22 It is a dynamic industry. This number 14, literally, is just a number

1 we've learned in the last day or two. We have a list of the 14 that intend to pursue
2 either ISL and/or conventional. We have another four that are restart. We
3 maintain that list. We spoke to the industry during a workshop back in February,
4 asked them to share with us letters of intent at the earliest opportunity so we can
5 better plan and have a better idea of what is in fact actually coming. We maintain
6 that list.

7 You cited a particular system as a way of keeping track of that. We can
8 work toward including it in that system or something like it to make sure that we
9 pass that information up through our system including the Commission. It is
10 dynamic and frankly, I expect the numbers to change again as the price of
11 uranium continues to climb presumably.

12 COMMISSIONER MERRIFIELD: As you look at the history of
13 uranium mining, too, it can go dynamic in multiple directions. I think one of the
14 things that the Commission is mindful of is making sure that we appropriately
15 target ourselves on one end of it where on the reactor side we've got the right
16 resources, recognizing some greater degree of confidence that those will
17 ultimately come in.

18 I think on the uranium side because of the perspective and I use that word
19 in its alternative form, prospective nature uranium mining, I think we do need to be
20 a little bit more careful in our expectations of that particular one. I would follow up
21 on your response, and I don't have a bottom-line answer to it today, nor do I
22 expect one from you.

1 I know there's been some tension in terms of the need for environmental
2 impact statements relative to specific ISL applications vise earlier on we had done
3 environmental assessments. I'm not entirely certain - I have some understanding
4 of it and we need not get into detail here, but from my own view point I do think
5 that the old approach of environmental assessment was sufficient without having
6 to go with a more expansive notion. But to the extent we can cover some of this in
7 the guise that would certainly make everybody's life a bit easier.

8 MR. CAMPER: The good news is based on our discussions with the
9 Office of General Counsel while these environmental impact statements are
10 required for either methodology consistent with Part 51, the clearest thing is that
11 we can address this via a generic environmental impact statement. We are
12 proceeding accordingly, because frankly it makes the most sense in terms of
13 efficiency and has the highest likelihood of success on the road.

14 COMMISSIONER MERRIFIELD: Okay. Dennis, on slide 13 you
15 mention the radiation source protection and security task force that I was involved
16 with. I appreciate your kind comment but certainly I want to take this as yet
17 another opportunity to thank our managers and certainly the staff who are involved
18 in that report in order to make it a success.

19 We may have been a week over our original deadline or something
20 thereabouts, but that's about as good as it gets for the government. I think we
21 came up with a good product with our interagency counterparts. Can you discuss
22 just briefly what you think are going to be some the issues that the staff will be

1 engaged on this year as it relates to the task force?

2 MR. RATHBUN: Charlie?

3 MR. MILLER: I'll take that since I chair the Interagency Task Force.

4 We recently met about a week ago with the interagency task force. There are a
5 number of items that came out of the report as well as some things that have
6 come up since then. Let me touch on some of the things that we're going to focus
7 on.

8 One, we have stood up a subcommittee to look at the cesium chloride
9 issue. Secondly, in a broader sense, the alternative technologies that were talked
10 about in the report are being actively worked on. Third, there has been a
11 subcommittee stood up to focus on some of the educational messages that we
12 want to get out as a Federal government and homeland security with DNDO has
13 agreed to chair that task force and we're actively participating.

14 The goal here is to try to put out a consistent message across the Federal
15 government with regard to issues concerning things like RDDs and others so
16 mixed messages don't go out. That's the goal.

17 Also, we recently - the Chairman received a letter from Secretary Chertoff
18 which we responded to and said that we would be putting this before the
19 committee. The interagency committee is going to look into the matters that
20 Secretary Chertoff has us to look into. This relates to the source list that was
21 identified through the task force report. So we are going to reactivate the
22 subcommittee to look at that, although I must say that at the most recent meeting

1 no one had anything that popped out of their heads with regard to that.

2 As we stand up that, we've asked Homeland Security to come and give the
3 subcommittee a briefing perhaps to embellish what was in Secretary Chertoff's
4 mind as he sent that letter. So there's just a few of the activities we plan on taking
5 on over the next year. I was encouraged by the enthusiasm shown by the task
6 force at our most recent meeting. We are getting some new faces. Turnover
7 always happens. We are getting good support from the other Federal agencies.

8 COMMISSIONER MERRIFIELD: I appreciate that outline. Next is
9 the National Source Tracking System. We've had some difficulties because it has
10 not rolled out as quickly as we would have wanted. In fact, I engaged with our
11 contractor, I think we got some additional assistance from the outside and we
12 ginned them up a bit, but obviously we still have FISMA issues. When is that
13 going to be done?

14 MR. MILLER: The system or the FISMA issues?

15 COMMISSIONER MERRIFIELD: Well, the FISMA issues are driving
16 the system.

17 MR. MILLER: I could generally start the dialogue on that, but I'm
18 going to ask Ed Baker to support me because OIS is the experts to speak on the
19 IT security issues. We've recently, as we mentioned in our remarks, got to a point
20 where we're allowing the contractor to proceed with the development of the system
21 and that's going to be those portions of the system that will have no security in the
22 modules.

1 There are going to be some that still have security in the modules. We're
2 still working our way through some of the IT security issues overall. The system
3 will not be valuable at all if at the end of it we can't put it into production mode and
4 doesn't meet the high, high, high requirements that such a system supports. We
5 have had trouble on the IT security side. A lot of it is related to the first of a kind
6 attempt to do this on our part.

7 The requirements that came out for this have evolved over time. It's taken
8 the contractor some time to, I think, really to come up to speed along with us on
9 some of that. I'm certainly not an IT security expert. I depend upon OIS to
10 support me in that regard.

11 Ed and I meet weekly to try and resolve these issues, but there still are few
12 out there that relate to some of the hardening of the servers that our going to be at
13 the remote location. Ed? Supplement me there?

14 MR. BAKER: Ed Baker, I'm the Director of OIS. Right now, we have
15 a proposal in from the contractor. They term it a request for equitable adjustment
16 which lays out a new architecture for the system. The original architecture did not
17 even discuss the security modules for the system. We're in the first week of that
18 review. The forecast is it will be two weeks before we finish it and then we have a
19 meeting with our new CIO, Darren Ash, to go through with Charlie and myself a
20 review to say are we at a go/no go point with regard to the proposal from the
21 contractor. Beyond that, I wouldn't want to discuss in this meeting where we are
22 with regard to the review. It's under review.

1 I can tell you that the review went backwards - excuse me, the package, the
2 proposal went backwards in a number of areas where we felt we had an
3 agreement with the contractor and they came in and made proposals that deviated
4 from what we thought we had as an agreement. So that was a bit of a surprise.
5 We thought we were moving forward and they took a couple things off the table
6 that we thought they were proposing. That's where we are. I'll be glad to answer
7 any specific questions.

8 COMMISSIONER MERRIFIELD: This isn't quite the answer I was
9 looking for, Mr. Chairman. Obviously, some of the details are inappropriate to get
10 into here. I've done enough government contract lawyering in the past and I
11 appreciate that. Sometimes it's the contractor, sometimes it's us and figuring out
12 where that level of blame goes isn't always easy.

13 Mr. Chairman, this is the most important thing we're working on from a
14 computer standpoint right now and we've got to get this right and we got to get it
15 right fast. I'm terribly disappointed to hear this information today.

16 MR. BAKER: Commissioner, we were disappointed with the proposal
17 we got.

18 CHAIRMAN KLEIN: I'm sure with Darren coming on board, we would
19 probably have some of the contractors we might look at if we're not getting
20 satisfactory results.

21 MR. BAKER: That's the discussion we'll have when we finish the
22 review of the proposal.

1 COMMISSIONER MERRIFIELD: Yeah. Mr. Chairman, I used to
2 council folks on some government contract issues like this and you can get a new
3 contract but that delivery may be five years down the road. Okay. We'll have to
4 follow up in private, I think because I would like to get a little more information
5 about where that stands. Mr. Chairman, I am going to stop. My counter isn't
6 working.

7 CHAIRMAN KLEIN: I think it turned 180 degrees. We have a defect
8 on this side of the table. Commissioner Lyons?

9 COMMISSIONER LYONS: Well, I'm afraid I'll have to start right
10 where Commissioner Merrifield left off. Let me first complement an excellent
11 briefing. It was very well done. But I, too, wanted to ask about the National
12 Source Tracking System and Commissioner McGaffigan was in contact with me
13 also asking that we pursue in depth the National Source Tracking System. So
14 even though he is not here, his concerns are very much focused in this area. Ed's
15 particular request was that I not let the questioning stop until we got a firm date for
16 delivery.

17 CHAIRMAN KLEIN: I don't think we have that much time.

18 COMMISSIONER LYONS: I believe Commissioner Merrifield just
19 exhausted that option. I can only just reiterate the frustration and the concern that
20 I have on the National Source Tracking System; delays therein. I think it's
21 reasonably well known that I've expressed a lot of concerns on our approach for
22 this as long as I've been here, I think, And those concerns continue.

1 My first meeting with our new CIO, this was one of the primary areas I
2 focused on. I think this is going to be a major, major - well it already is a major
3 embarrassment for the agency. It's something that Congress and the American
4 people are counting on us for and I'm just very, very sorry to see it in this situation.

5 CHAIRMAN KLEIN: What I would recommend is we have a closed
6 meeting on the National Source Tracking System where we can get into some of
7 the details and specifics. So I think one of our action items will be to follow up with
8 a future meeting where we can have a closed meeting and talk about some
9 specifics.

10 COMMISSIONER LYONS: Perhaps in leaving this, let me just note
11 that we have noted in the past that Canada has a system up and operating. I have
12 no idea to what extent it would come close to complying with FISMA, but they do
13 have a system up and operating at least we've been told that. That just adds to
14 my level of concern. I don't know if Charlie or anyone wants to respond.

15 MR. MILLER: Can I respond to that? Canada's system wouldn't cut
16 it with regard to what we need. We sent a team up there to look at their system. It
17 was devised for a slightly different purpose. It's on a platform that's outdated that
18 they are going to replace. I'm fairly confident that it couldn't pass the FISMA test
19 that we require for our system. Nor would it be as comprehensive in its reporting
20 as we are trying to achieve and our system is mandated by legislation.

21 They do have something that they stood up in that regard and I talked to the
22 Canadians quite a bit about it. They're as interested in what we are doing with

1 regard to how they might enhance their system as we are with theirs.

2 COMMISSIONER LYONS: I know that's a source of great frustration
3 for everybody and Charlie, every time you and I meet that's probably number one
4 on the agenda.

5 MR. MILLER: I didn't have any gray hair when we started this.

6 COMMISSIONER LYONS: I did. It's getting worse.

7 CHAIRMAN KLEIN: I think what you're picking up here is if we wait
8 for perfection, we may be waiting a long time.

9 COMMISSIONER LYONS: That's partly why I asked about the
10 Canadian system. It ain't perfect.

11 MR. MILLER: It's not perfect. The question becomes we have to
12 make some hard decisions; are we willing to accept the higher level of risk in order
13 to be able to get that information, risk from a perspective of information technology
14 security.

15 COMMISSIONER LYONS: I agree with the Chairman. This ought to
16 be another meeting in a different setting. You're certainly hearing major concerns
17 from the empty chair and three of us.

18 COMMISSIONER MERRIFIELD: Can I chip in one more thing? I
19 haven't had a chance to meet our new CIO yet, which I'm looking forward to doing,
20 but I've got to say all these articles about other agencies being able to deal with
21 FISMA and we seem to have an extraordinarily difficult job of doing it in this
22 agency. I sometimes wonder whether the problem is us. The perfect is the enemy

1 of the good. We may be in that circumstance here in National Source Tracking
2 System. I couldn't agree more with what Pete Lyons just said.

3 COMMISSIONER LYONS: The CIO recognizes that challenge based
4 on my meeting with him. I don't honestly know if this probably will go to Steve
5 Reynolds, but I don't know if Charlie or Janet will want to handle it. I don't know.
6 We've talked about the increased interest in possibly a number of additional
7 Agreement States; certainly on many, many levels that's very positive. But we do
8 have expertise particularly in the Regions associated with inspections of the
9 materials licensees.

10 As more of this responsibility transfers potentially to the new Agreement
11 States, this has to lead to questions on staffing in the Regions. I'm curious if we
12 are planning ahead, if we have a transition plan as to how we're going to utilize,
13 train people within our ranks who are focused in this area and may find that they
14 need to transition.

15 MR. MILLER: I am going to ask Steve to go to the microphone so
16 you can get the Regional perspective on this. As you well know, the uniqueness
17 of this program is both licensing and inspection are done in our Regional offices
18 and a few years ago we consolidated the materials programs from what were
19 Region I and II into Region I. Region I is now one of the largest affective near
20 term regions with regard to the Agreement States; Pennsylvania, Virginia, New
21 Jersey will all fall under Region I and it's going to be a lot of licensees.

22 In the near term, the Regions have taken some activities. Region I has

1 MR. MILLER: From what Steve said, what we're trying to do and
2 Larry has kind of taken up the mantle here and George Pangburn started this
3 effort when he was in Region I and now he's here my deputy. I've got his
4 experience and expertise in that. We're looking for ways to take advantage of the
5 expertise that in the Regions if there isn't enough work for them to do.

6 With that said also, though, we're going to have to wait just a little bit to see
7 as we get NARM and that moves into our purview for those States that don't
8 become Agreement States what the balance of needs are there. We're looking at
9 opportunities to perhaps have the Regions either support headquarters or out
10 source work in the coming years, if that's the logical thing to do.

11 In the longer-term if we do approach a very large number of Agreement
12 States approaching 50, we'll have to reconsider, I think, programmatically down
13 the road the structure of the overall organization.

14 COMMISSIONER LYONS: George, did you want to add to that?
15 You're starting to jump to the mic.

16 MR. PANGBURN: George Pangburn, Deputy of FSME. In the past
17 the Regions have been able to atrit down when States became Agreement States
18 and there wasn't a problem with one State in particular, but we started to look at
19 this last summer and realized we were coming across the perfect storm in Region I
20 with Pennsylvania, New Jersey and Virginia all coming about pretty close in time
21 to one another.

22 It presented two dilemmas to us. One is knowing this is coming and you

1 could lose funding for as many as 20 staff in the out years, how do you get the
2 work done between now and then and the longer-term issue is what happens after
3 those Sates leave when you may have 15 or as many as 20 people who are on
4 your roles and this agency has not historically let people go. That's not our
5 practice. We find ways to use the expertise and it's consistent with our focus on
6 knowledge management.

7 With interacting with Marty last summer I developed a paper and
8 coordinated with the Regions and headquarters that looked that this effort and we
9 discussed at a management retreat last fall in Baltimore. At that time we decided
10 to have a group of all the Regions, headquarters program offices take it and go
11 farther to address the longer term issues of how that group of personnel,
12 particularly in Region I, but looking holistically across agency, might be best
13 utilized. I think the group is off to a good start.

14 The time frames have stretched out a bit. Pennsylvania is going to come
15 on, it looks a little earlier than the other two so the problem becomes less of one in
16 '09 than in fiscal year '10. I think we are focusing on this and recognizing that it is
17 a particular challenge in knowledge management.

18 COMMISSIONER LYONS: I appreciate all these comments. At least
19 from my perspective, while on the one hand I see many advantages toward the
20 increase in number of Agreement States, I also feel strongly that we have highly
21 trained people with expertise in these areas and we need to as an agency find
22 ways to continue to utilize their expertise and make sure that they see themselves

1 as fully contributing members of the agency.

2 I appreciate all the responses. I'm glad it's well recognized as an issue.

3 We don't have a timer. Can I try one more question?

4 CHAIRMAN KLEIN: We don't.

5 COMMISSIONER LYONS: Probably a question for Larry. You
6 referred to the low-level waste strategic assessment that's ongoing and I wanted
7 to ask a question that may be related to that, and that's just frankly where do we
8 see the agency and the country going now that the decision as far as I know is
9 pretty much made that Barnwell will close to out of compact wastes, which leaves
10 many tens of States with no obvious recourse on Class B and C waste.

11 I don't know what the appropriate path forward is, but I think it's going to be
12 very challenging. I would appreciate your comments and I hope this is part of the
13 strategic assessment.

14 MR. CAMPER: Sure it is. It's a great question, part of which as an
15 organization we're positioned to do something about and part of which we're not.
16 The part that we're not is in terms of stimulating or fostering the development of
17 additional low-level waste sites assuming that it would be economically viable to
18 do so. There are things that we are doing and are preparing to meet this
19 challenge.

20 With Commission direction, the staff is currently doing a review of all of the
21 guidance that we have developed over many years on the low-level waste storage
22 front. Some of it is old information going back to the early '90s. We're taking the

1 look to see if there's any gaps in that information with regard particularly to Class B
2 and Class C low-level wastes storage for long periods of time.

3 The guidance will be completed and out to the public and licensees for use
4 on the order of six months prior to the closure of Barnwell in the summer of 2008.
5 The emphasis of that guidance will be principally toward non utility licensees,
6 especially institutions such as medical facilities and research institutions because
7 utilities by comparison have resources and storage capacity to accommodate that
8 need.

9 At the same time that's going on, NEI is currently conducting a guidance
10 update initiative and we are in communication with the folks at NEI about that as it
11 relates to utilities. We have assumed all along that Barnwell would close. That
12 was the prudent decision.

13 Fortunately, the volumes of Class B and Class C waste are not high,
14 certainly not high by comparison to Class A waste. It is manageable. It is
15 incumbent upon us to get that guidance in current terms and get it out in time. We
16 will do that.

17 COMMISSIONER LYONS: I think as an agency we may be
18 challenged to assure that such wastes, B and C, are safely stored as some of the
19 licensees have greater challenges finding places to put it. I also think that it may
20 come to the point where as an agency. maybe this will come out of your review,
21 that we need to be recommending to Congress actions that do need to be taken
22 because as you pointed out there's quite a limit to what we the NRC can do to

1 solve this problem. But it's a national problem.

2 To the extent that it is becoming significant, I think it's going to be up to us
3 to provide some advice to Congress on possible solutions. So I appreciate that it
4 is well recognized as an issue and I think we need to stay focused on it over the
5 next few years because I don't see much relief coming.

6 MR. CAMPER: I would agree. Frankly, whenever I find myself
7 engaged with industry about discussions on the volume of Class B and Class C
8 waste, there's generally a recognition for the near term we don't have a waste
9 capacity problem. These materials can be safely and securely stored. By the
10 same token, if we project out into the future there's another bow wave of
11 decommissioning that will occur a number of years out. Proactive thinking for the
12 long term is in order as well.

13 COMMISSIONER LYONS: As you point out, the bigger issue is not
14 with the utilities who generally have options.

15 MR. CAMPER: That's correct.

16 COMMISSIONER LYONS: I'll stop there. I hope we have another
17 round.

18 CHAIRMAN KLEIN: We will. I'm going to start off my questioning
19 with my favorite area of Agreement States and due to my former life's position.
20 One of the questions I've always had is in terms of the Agreement States, how do
21 we ensure consistency and how do you inform best practices.

22 Could you tell us a little bit about how you do that now and what we should

1 look at to do it better to ensure consistency and the sharing of best practices?

2 MS. SCHLUETER: Through the integrated materials performance
3 evaluation program we certainly use a team approach which involves NRC
4 headquarters and the Regions and has an Agreement State representative as well
5 on the team. We go out and use our IMPEP procedures and review criteria to
6 ensure that we're looking at each State in a consistent manner and making our
7 determinations of adequacy and compatibility.

8 The team brings its findings back to an independent management review
9 board which is held here at headquarters, which Marty is the chair of and we have
10 Charlie and Karen Cyr and we also have an OAS representative on the board as
11 well. So there's always an independent review of the team's findings before the
12 agency's final decision is made.

13 I think we have a lot of confidence in the system that we have in place and
14 we receive a lot of positive feedback from the States that are subject to the IMPEP
15 review. They oftentimes comment to us that they learned a lot and also that they
16 would prefer that other Federal agencies such as the EPA would take a similar
17 approach to coming in and auditing their program. That they feel as though it's
18 comprehensive and very independent and has a lot of credibility as well.

19 CHAIRMAN KLEIN: In terms of sharing best practices and letting
20 other States know what works in other areas, how you do that and what should we
21 do to make it better?

22 MS. SCHLUETER: Well, I think we do that through the report itself of

1 the review and also as I mentioned the individuals that participate as team
2 members; go back and integrate those best practices from a State that they've
3 reviewed.

4 We also at one point in the past, perhaps twice, did put out a list of best
5 practices that we observed during our IMPEP reviews and we shared that with all
6 of the Agreement States so that they could have the benefit of looking at those
7 practices of individual Agreement States and electing to incorporate those into
8 their own programs. We try to routinely share that information.

9 We also have a new initiative that has to do with inspections of materials
10 licensees and it's about best practices. We've asked an Agreement State
11 representative to also help us on that effort as well so that we can share what's
12 going on in the NRC Regional experience and share that with the Agreement
13 States as well.

14 CHAIRMAN KLEIN: Okay. Question for Larry. In terms of uranium
15 mining, I was recently visited by some companies that do in-situ leach mining and
16 what was interesting was the fact that they're looking at some satellite systems
17 and sometimes they might be right on the border between an Agreement State
18 and a non-Agreement State. How do you handle those?

19 MR. CAMPER: As the application process becomes a reality and we
20 find ourselves engaged in discussions with sites, one of the first things we're going
21 to be doing, of course, is having dialogue with the Agreement State. We have a
22 licensing responsibility but they clearly are a hugely vested stakeholder as are

1 others near the site.

2 The simple answer is as this proceeds along and we get a clear indication
3 of applications coming in, we will initiate interactions with the various stakeholders
4 to ensure that we're getting their views and so forth. We know, for example - on
5 the one hand there is a lot of enthusiasm for uranium recovery but on the other
6 hand there's also a great deal of stakeholder interest out there already and we can
7 predict that there will be certain sites that will be subject to hearings, probably
8 three or four if we look out here. On your point, it's going to require
9 communication and outreach on our part.

10 CHAIRMAN KLEIN: Thanks. One of the questions and Charlie,
11 obviously, you have melded some organizations together to make a new
12 organization. What is your turnover rate and percentage of new people that you're
13 bringing in?

14 MR. MILLER: I think our turnover rate is probably fairly consistent
15 with the agency numbers. A lot of the people that I've lost I would say I didn't lose
16 to external organizations outside of the NRC. My losses are still the NRC's gains.
17 Joe, do you have the figures on the turnover?

18 MR. HOLONICH: I don't have the figures with me, Charlie. We've
19 been using 10% which has been the NMSS historic and we have not any data to
20 indicate it would be different than that.

21 MR. MILLER: It hasn't been radically different than the agency
22 numbers. I think we're fairly consistent with that. With regard to new people, I'm

1 going to do an advertisement. I've got an incredibly talented staff who the people
2 at this table wouldn't be successful without. It's a mix of people with a lot of
3 experience.

4 We've brought in some new talent that have come out of schools recently. I
5 just can't tell you how impressed I am with these young people. They're thirsty.
6 They want to get involved with the issues. They're quick studies. It really gives
7 me some solace with regard to our future on how fast these people are picking up
8 activities. They're picking things up much faster than I did when I was their age.

9 CHAIRMAN KLEIN: That does give hope for the future, doesn't it?

10 MR. MILLER: I recognize I had to use a slide rule, but nevertheless, I
11 can't tell you how impressed I am with them. We are really getting some good
12 talent. I think our recruiting efforts are really paying off.

13 CHAIRMAN KLEIN: That's good. As I've said before, our strength as
14 an agency is our people. If we keep hiring good people, training them and giving
15 them authority and responsibility we'll be successful.

16 Speaking of a program that had some challenges initially. Shortly after I
17 arrived, I got a letter from DOE that was one of the dumbest letters I think I ever
18 received about WIR.

19 MR. MILLER: You could say that Chairman, we can't.

20 CHAIRMAN KLEIN: After we have gotten over that surprise letter
21 that no one knew was coming, how are we doing?

22 MR. CAMPER: Actually, I think we're doing well. We've had a

1 number of meetings with DOE managers and their staff to discuss how to improve
2 the consultation process in and of itself. We've had a number of discussions about
3 how to proceed with addressing the nine generic technical issues that we identified
4 during a meeting in South Carolina almost a year ago now.

5 We have, frankly, and as a practical matter, done something that we
6 thought needed to be done and that is in regard to the ongoing work for
7 performance assessment of the Tank Farm F, we've had a number of early
8 technical exchanges between the two staffs well in advance of any determination
9 being on the table so there's not a pride of ownership involved. The two staffs are
10 really consulting and working together. It's going well.

11 What we need to do now is two things. One, we need to get something on
12 the table that will memorialize the fact that we have proceeded well beyond the
13 July 31st letter. Whether that's a letter from us to them or from them to us or some
14 coordinated letter, we're discussing how to best do that. That's a high priority for
15 us.

16 The other thing is we had a public meeting last November with DOE and we
17 committed at that time to get back to the public in due course. We indicated there
18 was a need to have some government to government meetings. We've been
19 having those. We indicated at that time we would get back to the public in some
20 forum and let them know the outcome of that deliberation. We intend to do that
21 and probably have a public meeting in June.

22 That's our current planning wedge to be able to go back out to the public at

1 large and say okay, these are the things that we talked about. These are the
2 steps that we have or will be taking to improve the consultation process so that
3 everyone is privy to that information.

4 I think if I look back at the fact that we've completed two of the
5 determinations that we have developed and implemented the monitoring plan, that
6 we've had some fruitful discussions, I think it's going well all things considered.
7 We have a few things to do yet.

8 CHAIRMAN KLEIN: If you see things that we need to work on, let us
9 know because I talked with Secretary Bodman after the surprise letter and both
10 the NRC and the upper management of DOE want to do it right and do it well. I
11 think you've got a lot of encouragement to proceed and do good things. If there's
12 things that we need to do to expedite it, let us know. Just keep up the good work
13 in that area. It's important to the nation.

14 MR. CAMPER: We will do that. Commissioner Merrifield?

15 COMMISSIONER MERRIFIELD: Mr. Chairman, Even though he is
16 not here, I think I can speak on Ed's behalf and this reflects on your comments to
17 the preceding question. As a long standing member of the bash DOE team, we
18 certainly welcome you aboard with that particular comment.

19 Janet, on your slide you talked about some of the work some of the
20 Agreement States have contributed to assisting us in the IMPEP reviews and I
21 thought that was very positive. Very frequently we talk about States where there
22 are gaps and I think it's positive to talk about areas where the States have been

1 actively supporting the program. There's not a question in that, but I certainly
2 wanted to recognize that.

3 I think it was a good call on your part. That having been said, since joining
4 the Commission, I've long challenged the staff and this dates back probably years
5 at this point, to think about the Agreement State program in a couple of ways.
6 One is the notion of more States wanting to become Agreement States is nothing
7 new. We've seen some of that on the horizon. Some States have been saying for
8 a long time they want to do it. They finally matured in doing that.

9 But the challenge that I remember asking the staff to think about was if we
10 were in a position where all the States would become Agreement States, what
11 kind of program would we have? Why would a national materials program look
12 like? I think the staff has, to its credit put a significant amount of effort in terms of
13 thinking and planning on what might happen if in fact we went down that road.

14 Now, my own personal view is that's not necessarily the right place to be. I
15 say that because I reflect on the experience we've had with IMPEP reviews in my
16 own home State of New Hampshire. We just had a cyclical problem of having
17 sufficient resources and having the right kind of people in the right places to meet
18 their objectives as an Agreement State program.

19 I reflect back on a letter that we dragged out of the files from then Governor
20 Judd Gregg and this dates back to the mid to late 1980's when they were under
21 IMPEP review of heightened scrutiny because they didn't have enough money and
22 didn't have enough staff. I reflected on that because I had a couple of discussions

1 with the governor of New Hampshire more recently to urge him to get resources to
2 put toward the Agreement State program in New Hampshire to get more people
3 and more money.

4 And so, I know the staff is working on trying to see how we might
5 encourage more States to become Agreement States. I think from a big State
6 standpoint that makes sense. I think speaking on behalf of small States, I think
7 there's a lot of questions in New Hampshire from the standpoint that they ought to
8 give up the program. They came pretty darn close to doing that.

9 Rhode Island right now is under that consideration and I can understand
10 why. Some of the States that we have left on the remaining States are very small
11 States and the burdens of crafting a program that would meet the obligation of
12 doing it well is not only costly but it requires the right personnel to do it. Not every
13 State is a big State that can meet that challenge.

14 I personally think that down the road a successful Agreement State
15 program nonetheless may mean we have 10 or more States that just aren't in the
16 right position to go that way. I think that as the staff is looking at this, I think they
17 need to look at it in a balanced way. So that's just more of an editorial comment.

18 I have a question on IMPEP and that is for the purposes of an Agreement
19 State program, we take our regulatory independence very, very seriously. If there
20 were a regulatory decision made by an Agreement State program and that
21 decision was going down a particular road and the executive official in that State,
22 namely the governor, interceded with that program and said you may be wanting

1 to grant that particular license but I don't want you to do it. How does that affect
2 our IMPEP review if there is a political intercession on what should be an
3 independent regulatory decision?

4 MS. SCHLUETER: I don't know as though we have ever found
5 ourselves in that circumstance. But clearly I think that we would have to look at
6 that particular specific licensing case and make some independent judgment as to
7 whether or not the decision by the governor in that case, which would take the
8 regulatory program perhaps in a different direction would cause some sort of
9 transboundary issue or implications for neighboring States, for the NRC.

10 Does it exceed the adequacy and compatibility framework under which
11 those rules were written? Does it go outside of what would be a normal course of
12 flexibility or normal degree of flexibility? I think we have to look at the impact of
13 that decision and work with not only our Office of General Counsel but also the
14 State of course to determine whether not there would be any action necessary on
15 the part of the NRC.

16 COMMISSIONER MERRIFIELD: I think we'll have to see whether
17 there are examples of that or not, but it would seem to me we were created as an
18 independent regulator to make decisions outside of the boundaries of the
19 executive branch. The Agreement State program is intended to allow the States to
20 stand in our shoes and to the extent that a State cannot demonstrate that the
21 regulator in fact is consistent with that principle, then I think it calls into very
22 question the appropriateness of their maintaining that Agreement State status.

1 If a governor in theory, and I may only be speaking in a theory here, but if a
2 governor in theory can go to the head of a regulatory agency and say not
3 withstanding your process, I don't want you to grant that license because I don't
4 think it's the right thing to do. Then in my view, that is not consistent with the
5 Atomic Energy Act nor consistent with the principles of the establishment of this
6 agency as an independent regulator of these materials.

7 If we haven't looked at it before, I think we do need to take a look at it
8 because as part of the IMPEP program I think we need to make sure that there's
9 appropriate independence between the regulator and the executive branch of that
10 given State. If there isn't, I think that calls into question the appropriateness of
11 their holding the Agreement State authority.

12 Anyway, something I may challenge the staff to take a look at because
13 there may be an example out there.

14 MR. MILLER: Commissioner, if I can respond. If I found that was the
15 situation, I'd probably recommend to my management that we write to the
16 governor under the Chairman's signature to remind him of what you're talking
17 about in that regard. Hopefully, we'll never actually see that, but if we do I think
18 your point is very valid at least from my perspective.

19 COMMISSIONER MERRIFIELD: It also causes me to wonder
20 though in our IMPEP review, do we conduct an appropriate cyclical review of the
21 independence of the regulator for which we've given Agreement State authority?

22 MR. MILLER: I'm not sure that the team has ever looked at it from

1 that perspective. Challenging the State, did you ever not issue the license
2 because the governor didn't want you to for political reasons?

3 CHAIRMAN KLEIN: I can tell you from my experience with the Texas
4 Radiation Advisory Board which had a board independent that advised the State
5 on those matters. There's also legal remedies that can be pursued. There's a lot
6 of options that if an individual chooses or tries to choose something like that,
7 there's a lot of options that are available.

8 MR. MILLER: Also, compatibility comes into this too. When we
9 relinquish authority to the States, they have to be compatible, which is sometimes
10 different from regulation to regulation. They have to be compatible with our
11 regulations and if such an issue goes outside the bounds of compatibility that
12 would also be another factor, I think, in getting back to them.

13 COMMISSIONER MERRIFIELD: I only raised it because it would
14 strike me that we don't need to ask a question in that particular way or
15 inappropriately overridden - but I think there are ways of our asking questions in
16 an IMPEP review as to the appropriateness of the independence of the regulator.
17 We can stop there.

18 I should stop, but I want to say one final comment. That is, as it relates to
19 the comments that Commissioner Lyons made about the Low-Level Waste Policy
20 Act. I am in violent agreement with him on that regard. I believe the Low-Level
21 Waste Policy Act is probably one of the least successful statutes ever written by
22 the United States Congress.

1 CHAIRMAN KLEIN: Ranks right up there with the High Level Waste
2 Act.

3 COMMISSIONER MERRIFIELD: I was going to try not to go there.

4 COMMISSIONER LYONS: I almost said that to.

5 COMMISSIONER MERRIFIELD: But the point being, I think we do
6 need to think a little bit more broadly in our role perhaps providing some
7 suggestions as to how to fix it. While there may be no major short-term issues
8 associated with storage of some of these large components for a long period of
9 time, certainly, there's no logical technical reason why that needs to happen.
10 There ought to be some fix out there and we need to help perhaps come up with
11 some creative ways to do. So I concur with your suggestion. Thank you,
12 Mr. Chairman.

13 CHAIRMAN KLEIN: Commissioner Lyons?

14 COMMISSIONER LYONS: While we're concurring, I should also
15 mention that I concur with your comments on the GEIS that you made earlier.
16 Thinking back to I think it was perhaps August or September, we had a meeting
17 with the OIS and CRCPD, there was concern expressed about the number of
18 requests that was coming to the States from DNDO and DHS. There was a letter
19 sent by the Chairman to DHS asking or proposing ways that the NRC could
20 perhaps facilitate, help or broker such requests.

21 I'm just curious sort of what has happened since? Are we still hearing from
22 the States that there's too many requests? I know there's been a task force

1 formed involving the States and DHS. Just in general, how is that going?

2 MS. SCHLUETER: I think the dialogue is active with DNDO,
3 particularly on their efforts to establish the national database. We had meetings
4 back in the spring, summer and fall with DNDO. They had some passing of the
5 baton and different individuals that came into the programs so we spent some time
6 educating them on our regulatory role and the role of the Agreement States.

7 We also had their State Liaison point person, Bob Johns, come to the
8 annual OIS meeting in Mobile and he had a panel discussion with myself, Barbara
9 Hamrick and others. That was productive. There was a little more dialogue in the
10 fall and then it was kind of quiet for a few months.

11 Recently, we did receive a draft Memorandum of Agreement from DHS and
12 the purpose of that agreement would be between DNDO and an individual
13 Agreement State. They're interested in doing a pilot program this year with about
14 four Agreement States in order to test their development of a national licensee
15 database and we do have some Agreement States that are interested in
16 participating in the pilot.

17 So we're at the point now where we need to share the draft MOA with our
18 Agreement State representative and get their input as well. I do think the multiple
19 inquiries slowed down or perhaps stopped completely.

20 Because those dialogues did ensue and we were able to establish clear
21 points of contact, get a better handle on their scope, intent, goal and purpose of all
22 these efforts. Remember, the States do get periodic calls from CBP for different

1 purpose, for the alarm adjudication.

2 COMMISSIONER LYONS: I was curious, and Janet, you and I and
3 think George will be at the CRCPD meeting in probably two weeks. So to the
4 extent there are remaining concerns I'm sure they will be shared.

5 MS. SCHLUETER: I'm sure.

6 COMMISSIONER LYONS: Another Agreement State question.
7 There was a letter that came in recently from Texas expressing great angst about
8 Part 35. I had remembered that Alabama was concerned, but I didn't know Texas
9 was. Did we expect that letter?

10 MS. SCHLUETER: I don't believe that we did expect that letter. My
11 staff has been looking into it and I think we probably need to have some additional
12 dialogue with the State to better understand the specific concerns associated with
13 diagnostic and therapeutic uses and the training and experience requirements
14 associated with it.

15 The letter does focus on that area but does not specifically state a concern
16 with the current rule. As you know Part 35 and training and experience
17 requirement promulgation has always been a very interesting area and full of
18 disparate views from the States, our licensees, stakeholders, ACMUI as well.

19 It's a very interesting, complex and difficult rulemaking so there's always I
20 think implementation issues that come out over time some of which that need to
21 clearly be addressed. And in fact, our June meeting of ACMUI does have a
22 session on just implementation issues associated with T&E and Part 35.

1 MR. MILLER: Janet mentioned ACMUI. That's another stakeholder
2 the medical community that has different views that were expressed in the State of
3 Texas letter. The medical community is very concerned about not having standard
4 practices that go from State to State because of their ability to be able to conduct
5 business across State boundaries.

6 In one respect, our Part 35 T&E rule, the States have a certain view on it;
7 the medical community has a certain view on it. Whichever way we go, there's
8 angst by some set of stakeholders on it.

9 COMMISSIONER LYONS: Perhaps it was just me, but I didn't realize
10 there was that level of concern in Texas. If that letter was a surprise, then I
11 wonder if somehow our State liaison process perhaps needs to be strengthened
12 with Texas. I don't know. At least I would hope that type of a letter doesn't come
13 as a shock when it comes in, but I'm also glad to hear we have a process for trying
14 to work through it.

15 CHAIRMAN KLEIN: I was surprised, having known the system that
16 there was not dialogue before the letter came because that seemed a little
17 strange. My sense was that it just came. It might be interesting to go back and
18 talk to the Texas representatives and ask them did they think the phones didn't
19 work anymore. You couldn't call?

20 COMMISSIONER MERRIFIELD: You never know quite what to
21 expect out of Texas, Dale.

22 CHAIRMAN KLEIN: I was surprised as Commissioner Lyons that a

1 letter like that would come before there was some dialogue.

2 COMMISSIONER LYONS: Again, Janet and I and George will have
3 an opportunity in a two weeks presumably to sit down with the folks in Texas and
4 see what was on their mind or see further what's on their mind. Let me stop there.

5 CHAIRMAN KLEIN: You made a comment about budgets earlier and
6 just as a caution, no one ever gets all the money they need or all the people they
7 need or all the space they need. So we have to make decisions and so we'll
8 always have to prioritize on budgetary issues no matter who's paying the bill, even
9 with all the money we get. It's never enough.

10 Just a shout of warning that you'll never get all the things that you want.
11 We'll always have to prioritize and so you want to come up with a system to pick
12 the most important issues first and look at where you can do things more efficiently
13 and see if there things that you're doing that you don't need to do and things that
14 you should be doing and not doing and look your processes.

15 One final question I had for probably both Marty and Charlie is obviously
16 you've now not been in operation yet a year. You've taken some groups to put
17 together to make a new organization. How do you measure success?

18 MR. MILLER: I think I measure success in a number of ways.
19 Seeing significant process on the initiatives that at least I wanted to put in place.
20 Seeing our office processes developed. Seeing staff working together. Seeing
21 people who used to be in different capacities now starting to share responsibilities
22 and seeing people who used to work primarily in Agreement State programs and

1 working on former NMSS issues and seeing people that were in NMSS working on
2 Agreement State issues to try and meld the culture together.

3 I see success in accomplishments and being able to reach a conclusion on
4 activities that are on our plate. We went through an awful lot of them today. We
5 got a lot of policy issues on our plate in my office. Getting those policy decisions
6 behind us is success on my part.

7 I guess, finally, I see success in trying to continue how we fuel the staff
8 morale, reorganizations, space, the human needs are always the biggest thing that
9 stand in our way. As I've said, in spite of all that, I see the staff diligently trying to
10 go about and do the mission of the agency. And to me that's probably the most
11 rewarding thing.

12 MR. VIRGILIO: I think I would have to agree with Charlie and I think
13 the final measure is going to be the staff. As I said in my concluding remarks,
14 they've suffered a lot of disruption and challenges as any major change entails.
15 I'm sure we are not operating at full capacity yet. I think we have a ways to go.

16 The consolidation into one building is going to help us quite a bit and also
17 making sure we're settled on roles and responsibilities because I think we are still
18 duplicating some efforts as we bring several organizations into one organizational
19 unit. I think we'll know we're there when we see staff morale and organizational
20 capacity coming up. Thank you.

21 CHAIRMAN KLEIN: Thank you. Any final questions? I'd like to
22 thank you for the brief. I think you've got great programs. You have great people

1 and you've got good results. So keep up the good work. We certainly look
2 forward to hearing about the National Source Tracking System and FISMA and
3 we'll have a follow up meeting. And with that, the meeting is adjourned.

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