

May 14, 2003

MEMORANDUM TO: Carl J. Paperiello, Deputy Executive Director
for Materials, Research and State Programs

Paul H. Lohaus, Director
Office of State and Tribal Programs

Martin J. Virgilio, Director
Office of Nuclear Material Safety and Safeguards

Karen D. Cyr, General Counsel
/RA By Scott C. Flanders

FROM: Josephine M. Piccone, Deputy Director *Acting for/*
Office of State and Tribal Programs

SUBJECT: INTEGRATED MATERIALS PERFORMANCE EVALUATION
PROGRAM (IMPEP) FOLLOW-UP REVIEW OF THE NEW
HAMPSHIRE RADIATION CONTROL PROGRAM

This memorandum transmits to the Management Review Board (MRB) a proposed final report (Attachment 1) documenting the follow-up IMPEP review of the New Hampshire Radiation Control Program. The follow-up review of the New Hampshire program was conducted by an interoffice team during the period of February 4 - 6, 2003. The team issued a draft report to New Hampshire on March 14, 2003 for factual comment. New Hampshire responded to the findings and conclusions of the review by letter dated April 28, 2003 from Kathleen A. Dunn, Director, Office of Community and Public Health, Department of Health and Human Services (Attachment to the proposed final report).

New Hampshire's completion of the majority of the activities in the Program Improvement Plan has essentially eliminated the inspection backlog, eliminated the licensing backlog, developed a new fee legislation and rule, and improved the operation of the Bureau. However, several of the program improvements and accomplishments were not evaluated by the review team since they were outside the scope of the follow-up review.

For the three indicators reviewed, the follow-up review team found New Hampshire's performance to be satisfactory with recommendations for improvement for one indicator and unsatisfactory for the other two indicators. Accordingly, the follow-up review team recommends finding the New Hampshire Agreement State program to be adequate to protect public health and safety but needs improvement and not compatible with NRC's program. Although the findings in these three performance indicators and the overall program finding did not change, the review team did note overall program improvements, efforts to address the root causes of the program deficiencies, and the continued commitment by the Department to support the Bureau in addressing deficiencies. The review team recommends that the period of Heightened Oversight continue in order to assess the progress of the State in implementing corrective actions in the Program Improvement Plan which addressed the recommendations in

the final 2001 IMPEP report. The follow-up review team also recommends continuation of the bi-monthly status reports and bi-monthly conference calls to discuss the progress to date on the State's program improvement plan. Based on the results of the current IMPEP review, the follow-up review team recommends that the next full review should be in approximately two years.

The MRB meeting to consider the New Hampshire report is scheduled for **Wednesday, May 21, 2003, from 1:00 p.m. to 3:00 p.m., in One White Flint North, Room O-3-B-4**. In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for that meeting is attached (Attachment 2).

If you have any questions prior to the meeting, please contact me at 415-2325 or Dennis Sollenberger at 415-2819.

Attachments:
As stated

cc: John Wallace, Deputy Commissioner
Department of Health and Human Services

Kathleen A. Dunn, MPH, Director
Office of Community and Public Health
Department of Health Human Services

Brook Dupee, Assistant Director
Legislative Liaison
Office of Community and Public Health

Dennis O'Dowd, Chief, Materials Section
Bureau of Radiological Health
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Donald P. Bliss, Director
New Hampshire Department of Safety
Office of Emergency Management

William Sinclair, Utah
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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF NEW HAMPSHIRE AGREEMENT STATE PROGRAM
FEBRUARY 4-6, 2003

PROPOSED FINAL REPORT

U.S. Nuclear Regulatory Commission

ATTACHMENT 1

1.0 INTRODUCTION

This report presents the results of the follow-up review of the New Hampshire radiation control program, conducted February 4-6, 2003. This follow-up review was directed by the Management Review Board (MRB) based on the results of the June 25-29, 2001 Integrated Materials Performance Evaluation Program (IMPEP) review. The MRB directed that a follow-up review of the Technical Staffing and Training, Status of Materials Inspections, and Legislation and Program Elements Required for Compatibility indicators, be conducted in about one year from the MRB meeting based on findings of two unsatisfactory and one satisfactory with recommendations for improvement for the performance indicators. The follow-up review also included evaluation of the actions taken by the State to address the six recommendations made during the 2001 IMPEP review. During the review, the review team also took the opportunity to discuss the items to be addressed in a periodic meeting that were not reviewed as part of the follow-up review. The summary of these discussions are in Appendix D.

The follow-up review was conducted by a review team consisting of technical staff members from the Nuclear Regulatory Commission (NRC). Review team members are identified in Appendix A. The follow-up review was conducted in accordance with the November 5, 1999, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the follow-up review, which covered the period of June 30, 2001 to February 6, 2003, were discussed with New Hampshire management on February 6, 2003 and by teleconference on March 4, 2003.

The New Hampshire Agreement State program is administered by the Bureau of Radiological Health (the Bureau). The Bureau contains the Radioactive Materials Section (the Section), Radiation Machines Section, Radiochemistry Section, Emergency Response Section, and Radon Section. The Bureau is located within the Office of Community and Public Health, Department of Health and Human Services (the Department). The Department Commissioner is appointed by and reports to the Governor. Organization charts for the Department and the Bureau are included as Appendix B. At the time of the follow-up review, the New Hampshire Agreement State Program regulated approximately 80 specific licenses authorizing Agreement materials. The review focused on the regulatory program as it is carried out under the Section 274b (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New Hampshire.

Prior to the follow-up review, the NRC conducted a period of heightened oversight of the New Hampshire program which included New Hampshire developing and submitting a Program Improvement Plan in response to the 2001 IMPEP review, and bimonthly conference calls with the NRC to discuss New Hampshire's progress in implementing the Program Improvement Plan. The Program Improvement Plan was submitted on December 27, 2001. Conference calls were held March 12, 2002, May 21, 2002, July 30, 2002, October 8, 2002, and December 17, 2002. The Program Improvement Plan and minutes from the calls can be found in Appendix C. New Hampshire's actions and their status were reviewed in preparation for this follow-up review. New Hampshire's completion of the majority of the activities in the Program

Improvement Plan has essentially eliminated the inspection backlog, eliminated the licensing backlog, developed a new fee legislation and rule, and improved the operation of the Bureau. However, several of the program improvements and accomplishments were not evaluated by the review team since they were outside the scope of the follow-up review.

The New Hampshire radiation control program has made improvements through developing and passing legislation to allow the increased revenue from fees to be directed to the program rather than the general fund, through creation of an HP series and career ladder, through the hiring of two new staff, and through creative use of contractors to assist in licensing and inspection activities. Considerable efforts were also expended in meeting with licensees to gather their views and suggestions to improve the program and in improving licensing timeliness. However, there continues to be two vacant staff positions, including the Bureau Administrator. Although the inspection program has essentially eliminated the backlog of inspections, the inspection program needs additional time to operate at a satisfactory level. The program has not yet progressed in the adoption of regulations to be compatible with the NRC program, due to placing priority on the licensing and inspection programs as detailed in their program improvement plan and bimonthly call summaries.

The review team's general approach for conduct of this follow-up review consisted of: (1) examination of the heightened oversight information; (2) review of applicable New Hampshire statutes and regulations; (3) analysis of quantitative information from the Bureau's licensing and inspection data bases; (4) interviews with staff and management to answer questions or clarify issues; and (5) review of the Bureau's inspection files. The review team evaluated the information gathered against the IMPEP performance criteria for the two common and one non-common performance indicators and made a preliminary assessment of the State's performance.

Section 2 below discusses the results of the follow-up review of the New Hampshire program for the two common performance indicators. Section 3 below discusses the results of the follow-up review of the New Hampshire program for the one non-common performance indicator. Section 4 summarizes the follow-up review team's findings and recommendations. The general status of the other aspects of New Hampshire program addressed during periodic meeting discussions can be found in Appendix D.

2.0 COMMON PERFORMANCE INDICATORS

The follow-up review addressed two of the five common performance indicators used in reviewing both NRC Regional and Agreement State programs. The two indicators are: (1) Technical Staffing and Training and (2) Status of Materials Inspection Program.

2.1 Technical Staffing and Training

During the follow-up review, the review team evaluated actions taken by the New Hampshire program in response to the finding of satisfactory with recommendations for improvement made during the 2001 IMPEP review, as well as, the status of the staffing and training of the New Hampshire program.

Issues central to the evaluation of this indicator include the Bureau's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate

these issues, the review team examined the Bureau's training program, interviewed Bureau management and staff, and reviewed job descriptions and training records. The review team also considered any possible workload backlogs.

The review team's evaluation of the New Hampshire program's response to the three recommendations from the 2001 IMPEP review is presented below.

Recommendation 3

The review team recommends that the Bureau document a training plan for personnel that is consistent with the guidance provided in the NRC/Organization of Agreement States Training Working Group Report or the NRC Inspection Manual Chapter (IMC) 1246.

Current Status

The Bureau has drafted a training/qualification policy following IMC 1246. The review team discussed this approach and made several suggestions on simplifying the policy particularly in the documentation required. The Bureau staff indicated that the training policy would be finalized and implemented for all staff conducting materials activities.

The review team concluded that this recommendation should remain open until the Bureau finalizes and implements the training/qualification policy.

Recommendation 4

The review team recommends that the Department take the necessary actions to address the staff turnover and staff vacancies as appropriate.

Current Status

The Bureau has experienced additional staff turnover since the previous review. The review team believes that this turnover has significantly impacted the performance of the Section. The Bureau Administrator retired in April 2002 and has not yet been replaced. Section Supervisors have been taking turns serving in the Administrator position in an acting capacity. After interviewing a number of candidates, the Bureau hired two health physicists. One for a position in the Section and one position (CDC funded for bioterrorism) reporting directly to the Bureau Administrator. The Section currently has one vacant staff position. The Department conducted a nationwide search for the Bureau Administrator position. Although their searches found qualified staff, two offers for the Bureau Administrator position were declined and one health physicist declined the week before reporting to work. The main reason offered was low salaries. The Department developed and received approval for a new Rad Health Physicist series that provides increased salary potential and an extended career ladder. This new series should help with staff hiring and retention. In early January 2003, the recently elected Governor froze all vacant positions including the Bureau Administrator position and other staff positions, but the Department believes that they have a temporary "work around" for the Bureau Administrator position and are requesting a waiver for the health physicist staff position.

Although both the Department and Bureau have taken reasonable actions to fill these key program vacancies, the Bureau Administrator and the staff health physicist positions remain

vacant. Since the vacancies, in particular the Bureau Administrator position, significantly impact the performance of the Bureau in other indicators, the review team considers this recommendation open until these vacancies are filled.

Recommendation 5

The review team recommends that the Bureau examine and change the business processes and organization of the Section to improve the effectiveness and efficiency of the program.

Current Status

The Bureau has stopped the practice of rotating staff on a routine basis and the Section Supervisor for Materials and Section Supervisor for Machines assign work to the staff, as necessary. Support for the Materials Section is also supplemented with contractor support (in both licensing and inspection activities). Until permanent staff are available including the Bureau Administrator, the review team does not believe this recommendation can be closed.

The review team concludes that the New Hampshire program has made progress with their staffing and training, but still needs to complete the hiring of new staff, and finalization and implementation of their training and qualification plan for all staff. Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Technical Staffing and Training, continues to be found satisfactory with recommendations for improvement.

2.2 Status of Materials Inspection Program

During the follow-up review, the review team evaluated actions taken by the Bureau in response to the finding of unsatisfactory made during the 2001 IMPEP review, as well as the status of the inspections performed since the 2001 review and the current status of due and overdue inspections.

The review team reviewed the timeliness of core and initial inspections performed since the last review period, the current and projected backlog of overdue inspections, reciprocity inspections and the timeliness in communication of inspection results to licensees. The review team reviewed data provided by the Bureau from their inspection tracking system to determine the timeliness of inspections, and reviewed inspection files to determine the date of the issuance of inspection results to licensees relative to the date of inspection.

The review team's evaluation of the Bureau's responses to the two 2001 IMPEP review recommendations is presented below.

Recommendation 1

The review team recommends that the process for extending inspection frequency for good license performance be clearly defined and the Bureau maintain documentation of inspection extensions.

Current Status

In response to this recommendation, the Bureau developed an "Inspection Interval Change Authorization Form" that documents the basis for extending inspection frequency for good licensee performance. The review team noted that this form was completed and placed in each docket file, as appropriate. The Bureau's inspection tracking spreadsheet was also modified to include an entry for good performance extension. The next inspection due dates were appropriately modified for those licensees with extensions. This recommendation is closed.

Recommendation 2

The review team recommends that the Bureau take the appropriate management measures to conduct inspections (both initial and core) in accordance with the State's established inspection priority system.

Current Status

Since the last review, the Bureau completed 12 inspections of core licenses. Four of these inspections were overdue at the time of the last review. Seven of the eight remaining inspections of core licensees were performed overdue. The amount of time overdue ranged from one to 13 months. There were no routine inspections overdue at the time of the follow-up review.

The State's performance with regard to initial inspections was also reviewed by the review team. At the time of the 2001 IMPEP review, there were three new licensees that had not been inspected, one of which was overdue. Two of these licensees were inspected (including the overdue one) and the third one, issued in October 2000, has yet to be inspected. Since the last review, the Bureau has issued six new licenses that authorize byproduct materials. None of these licensees have been inspected and one license, issued in January 2002, is currently overdue. In summary, for initial inspections since the 2001 review, the program inspected one licensee at 16 months, has two initial inspections currently overdue, and five initial inspections not yet due.

Overall, the Bureau inspected nine of the 10 initial and core licensees overdue and currently has two initial inspections overdue. The review team determined that two factors contributed to the large percentage of overdue inspections. First, new licenses issued since the last review were not added to the inspection tracking system and were not part of the inspection plan for 2003. The new licenses were part of the master list used for licensing. The Section Supervisor indicated that this was an oversight, but also indicated that the lack of coordinated databases contributed to the failure to schedule the initial inspections. The Bureau continues to track inspections in the same manner as during the 2001 review. The Bureau is in the process of testing a new integrated database for their licensing and inspection information which should eliminate the failures in the old system. Second, the review team found that the Section

Supervisor would schedule core inspections on the month before they were overdue (i.e., inspection priority in years plus 25 percent since the last inspection), not at the anniversary month and year (i.e., inspection priority in years since the last inspection). This scheduling practice gives the Bureau little if no chance to conduct the inspection without it being overdue. Based on the Bureau's performance for conducting initial and core inspections and their current scheduling practices, the review team concludes that this recommendation should remain open.

The review team also reviewed the Bureau's performance with regard to the conduct of core inspections for licensees working in the State under reciprocity. During calendar year 2001, the State approved reciprocity requests from seven core licensees and conducted one inspection. During calendar year 2002, eight core licensees worked in the State under reciprocity and one inspection was performed. The performance criterion for reciprocity inspections is 20 percent of core licensees as indicated in IMC 1220. The Bureau's performance in 2001 and 2002 in this area was approximately 13 percent of candidate licensees, or one inspection short of meeting the performance criteria.

The timeliness of issuance of inspection results was the final area reviewed by the review team for this indicator. The review team reviewed 19 inspection reports and found that 14 were issued to the licensee within 30 days. Three of the reports were issued at 32, 34, and 84 days after the conclusion of the inspection. At the time of the review, the results for a fourth inspection had not been issued for an inspection that was conducted 47 days prior. The Section Supervisor indicated that a number of issues identified during this inspection had not been resolved, which was holding up the issuance of the report. The review team found a fifth inspection that was completed in January 2002 where the report had not been issued.

Since the last review, the Bureau completed 14 core inspections, including two initial inspections, and one reciprocity inspection. The completion of these inspections, seven of which were completed by their contractor, puts the Bureau on a course to improve performance for this indicator in the future. However, due to the percentage of inspections still performed on an overdue basis, the failure to include initial inspections in the inspection tracking system, and the practice of scheduling core inspections at the time they would become overdue, the review team believes that continued improvement in the program is needed.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Status of Materials Inspection Program, continues to be found unsatisfactory.

3.0 NON-COMMON PERFORMANCE INDICATORS

The follow-up review addressed one of the non-common performance indicators used in reviewing NRC Regional and Agreement State programs. The indicator is "Legislation and Program Elements Required for Compatibility."

3.1 Legislation and Program Elements Required for Compatibility

3.1.1 Legislation

The Department is authorized as the State's radiation control agency under the New Hampshire Revised Statutes Annotated (RSA) 1990, Chapter 125. The radiation control program is administered by the Bureau. The review team identified that one legislative change affecting the radiation control program was passed since the last review. This legislation created a specified radiation fund which can only be used by the Bureau. The Bureau is developing a revised fee schedule to increase fees and generate revenue for this fund. No other changes have occurred in the legal authority of the Bureau since the previous review.

3.1.2 Program Elements Required for Compatibility

The New Hampshire Rules for Control of Radiation are found in He-P 4000-4095 and apply to all ionizing radiation, whether emitted from radionuclides or devices. New Hampshire requires a license for possession, and use, of all radioactive materials.

The review team's evaluation of the New Hampshire response to the 2001 IMPEP review recommendation is presented below.

Recommendation 6

The review team recommends that the Bureau develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility.

Current Status

The New Hampshire program has not yet taken action to adopt overdue regulations due to focusing efforts of existing staff and contractors on improvements to the licensing and inspection programs. This activity has historically been a responsibility of the Bureau Administrator, a position which is currently vacant. The new bioterrorism health physicist position has recently been assigned this activity, but this individual started three weeks before the follow-up review, and therefore, no action has occurred to date.

The following 11 regulations are overdue. Current NRC policy requires that Agreement States adopt certain equivalent regulations or legally binding requirements no later than three years after they are effective. The Bureau will need to promptly address these regulations in upcoming rule making or by adopting alternate legally binding requirements.

- "Timeliness in Decommissioning of Materials Facilities," 10 CFR Parts 30, 40 and 70 amendments (59 FR 36026) that became effective August 15, 1994.
- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendments (60 FR 15649 and 60 FR 25983) that became effective March 1, 1998. Agreement States were expected to have an equivalent rule effective on the same date, and this rule is designated as Category B for compatibility.

- “Termination or Transfer of Licensed Activities: Recordkeeping Requirements,” 10 CFR Parts 20, 30, 40, 61, 70 amendments (61 FR 24669) that became effective June 17, 1996.
- “Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act,” 10 CFR Part 20 amendment (61 FR 65120) that became effective January 9, 1997.
- “Recognition of Agreement State licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State,” 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.
- “Criteria for the Release of Individuals Administered Radioactive Material,” 10 CFR Parts 20 and 35 amendments (62 FR 4120) that became effective May 29, 1997. Portions of the Part 20 amendment are designated as Category A for compatibility.
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057) that became effective August 20, 1997. Parts of this amendment are designated as A or B for compatibility.
- “Deliberate Misconduct by Unlicensed Persons,” 10 CFR Parts 30, 40, 61, 70, 71, and 150 (63 FR 1890; 63 FR 13733) that became effective on February 12, 1998.
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 35, and 36 amendments (63 FR 39477; 63 FR 45393) that became effective October 26, 1998. Portions of this amendment are designated as Category A for compatibility.
- “Transfer for Disposal and Manifests: Minor Technical Conforming Amendment,” 10 CFR Part 20 amendment (63 FR 50127) that became effective November 20, 1998.
- “Respiratory Protection and Controls to Restrict Internal Exposures,” 10 CFR Part 20 amendment (64 FR 54543; 64 FR 55524) that became effective February 2, 2000. Portions of this amendment are designated as Category B for compatibility.

The Bureau will need to address the following five regulations in upcoming rule makings or by adopting alternate legally binding requirements:

- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337) that became effective May 17, 2000. Portions of this amendment are designated as Category B for compatibility.
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendments (65 FR 63749) that became effective January 8, 2001.
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162) that became effective Feb. 16, 2001. Portions of this amendment are designated as Category B for compatibility.

- “Revision to the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298) that became effective April 5, 2002. Portions of this amendment are designated as Category A for compatibility.
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 (67 FR 20249) that became effective April 24, 2002. Portions of these amendments are designated as either Category A or B for compatibility.

The review team determined that, at the time of the review, the State has not adopted 16 NRC amendments to regulations required for compatibility. Eleven of these amendments are overdue and will be adopted in a time frame greater than three years after the effective date of their adoption by the NRC. Five of these eleven amendments are designated as A or B for compatibility as indicated above, and the “Low-Level Waste Shipment Manifest Information and Reporting,” amendment requires that an Agreement State adopt the amendment in the same time frame as the NRC, but no later than six months after the effective date of the NRC amendment.

The review team concluded that the delay in the promulgation of regulations in a timely fashion was caused in part by the high turnover in staff, which required the Section Supervisor and upper management to divert their time and efforts to other essential program elements such as licensing, inspection, incident response, and training of new staff. The Bureau Administrator vacancy significantly impacts this indicator since historically this individual has had responsibility for rulemaking. Based on the follow-up review, the review team considers this recommendation still open.

The State of New Hampshire has a sunset provision that limits any State regulation to a specific period of time. For the State’s radiation protection regulations, this duration is eight years. The review team noted that 16 of the 40 Parts that comprise the radiation regulations have expired. Six of these Parts are important to the Agreement State Program. These expired sections include: He-P 4037: Transportation of Radioactive Material; He-P 4061: Land Disposal for Low-Level Radioactive - Technical Requirements for Waste Classification; 4062: Requirements for Transfer of Low-Level Radioactive Waste for Disposal at Land Disposal Facilities - Manifest, Records, Reports, Quality Assurance and Audits; He-P 4070: Fees; 4090: Annual Limits of Intakes (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewers; and He-P 4092: Quantities of Radioactive Materials Requiring Labeling. These expired regulations may impact the State’s ability to implement a complete regulatory program. There may be regulatory gaps that need to be addressed through other implementing mechanisms such as orders or license conditions.

The review team concludes that the Bureau’s regulation adoption program has not functioned during the rating period. Since the 2001 review, the number of overdue NRC amendments has increased from eight to 11 and a number of the State’s regulations have expired. Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire’s performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, continues to be found unsatisfactory.

4.0 SUMMARY

The follow-up review team found New Hampshire's performance to be satisfactory with recommendations for improvement for the indicator, Technical Staffing and Training. The review team found New Hampshire's performance to be unsatisfactory for the indicators, Status of the Materials Inspection Program, and Legislation and Program Elements Required for Compatibility. Accordingly, the follow-up review team recommends finding the New Hampshire Agreement State Program to be adequate, but needs improvement, and not compatible with NRC's program. The review team considered recommending that the New Hampshire Agreement State program be put on probation given that two indicators were found unsatisfactory. However, the review team did not recommend probation because, although the findings for the program did not change, the review team did note improvements in the program, efforts to address the root causes of the program deficiencies, and continued commitment by the Department to support the Bureau in addressing deficiencies. The review team recommends that the period of Heightened Oversight continue in order to assess the progress of the State in implementing corrective actions in the Program Improvement Plan which addressed the recommendations in the final 2001 IMPEP report. The follow-up review team also recommends continuation of the bi-monthly status reports and bi-monthly conference calls to discuss the progress to date on the State's program improvement plan. Based on the results of the current IMPEP review, the follow-up review team recommends that the next full review should be in approximately two years.

Below is a summary list of open recommendations from the 2001 IMPEP report and new recommendations from this follow-up report.

1. The review team recommends that the Bureau take the appropriate management measures to conduct inspections (both initial and core) in accordance with the State's established inspection priority system. (Section 3.1) (Recommendation 2 from the 2001 report)
2. The review team recommends that the Bureau document a training plan for personnel that is consistent with the guidance provided in the NRC/Organization of Agreement States Training Working Group Report or the NRC IMC 1246. (Section 3.3) (Recommendation 3 from the 2001 report)
3. The review team recommends that the Department take the necessary actions to address the staff turnover and staff vacancies as appropriate. (Section 3.3) (Recommendation 4 from the 2001 report)
4. The review team recommends that the Bureau examine and change the business processes and organization of the Section to improve the effectiveness and efficiency of the program. (Section 3.3) (Recommendation 5 from the 2001 report)
5. The review team recommends that the Bureau develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility. (Section 4.1.2) (Recommendation 6 from the 2001 report)

LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	New Hampshire Organization Charts
Appendix C	Heightened Oversight Program Correspondence
Appendix D	Periodic Meeting Summary
Attachment	April 28, 2003 Letter from Kathleen A. Dunn, RN, MPH Response to Draft Follow-up IMPEP Report

APPENDIX A
IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Dennis M. Sollenberger, NRC/STP	Team Leader Technical Staffing and Training Legislation and Program Elements Required for Compatibility
Duncan White, NRC/RI	Status of Materials Inspection Program Periodic Meeting

APPENDIX B

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ORGANIZATIONAL CHARTS

ML030720471

APPENDIX C

HEIGHTENED OVERSIGHT PROGRAM CORRESPONDENCE

Minutes of Bimonthly Conference Calls:

1. March 12, 2002 Minutes (ML030720593)
2. May 21, 2002 Minutes (ML030720603)
3. July 30, 2002 Minutes (ML03020608)
4. October 8, 2002 Minutes (ML030720611)
5. December 17, 2002 Minutes (ML030160738)

Letters from/to New Hampshire:

1. December 27, 2001 Letter from Shumway to C. Paperiello submitting Program Improvement Plan (PIP) (ML020070241)
2. May 14, 2002 Letter from K. Dunn to P. Lohaus updating PIP (ML021410108)
3. July 23, 2002 Letter from K. Dunn to P. Lohaus updating PIP (ML022470292)
4. October 5, 2002 Letter from K. Dunn to P. Lohaus updating PIP (ML030720511)
5. December 12, 2002 Letter from K. Dunn to P. Lohaus updating PIP (ML030160717)

APPENDIX D

PERIODIC MEETING SUMMARY INCLUDING STATUS OF OTHER RECOMMENDATIONS FROM THE PREVIOUS REVIEW

A periodic meeting was held with New Hampshire management by Dennis Sollenberger, Team Leader, and Duncan White, Regional State Agreements Officer (RSAO), during the follow-up review pursuant to STP Procedure SA-116, "Periodic Meeting with Agreement States Between IMPEP Reviews." Those topics normally documented during the periodic meeting that were reviewed and documented as part of the follow-up review will not be discussed in this Appendix. The following topics were discussed.

Status of Recommendations from 2001 Report

See Sections 2.1, 2.2 and 3.1 for details.

Program Strengths and/or Weaknesses

The Department representatives indicated that staffing still remains the biggest issue facing the Bureau. This issue is discussed in Sections 2 and 3 of the follow-up review report. A second bioterrorism position with health physics qualifications has been transferred to the Commissioner's office.

The use of contract personnel has been successful in completing numerous inspections and licensing actions. These contracts expire in June 2003. The Department has initiated the process to renew the contracts.

The Section Supervisor indicated that a significant amount of time is spent interviewing potential candidates. In particular, the State's personnel rules require that each candidate be given a structured oral examination as part of the interview process. NRC staff offered suggestions that other States have used to evaluate or screen candidates and agreed to provide feedback on the structured oral exam currently in use.

The Bureau's integrated database ("Rads") is scheduled to begin testing the week of February 10, 2003.

With the exception of gaining legislative approval for a dedicated fund for revenue generated by fees, the Bureau has not taken any action since the 2001 review to amend the State's regulations. This issue is discussed in Section 3.2 of the follow-up review report.

One area of success in the Bureau since the 2001 review has been the significant reduction of the licensing backlog. This has been done with the use of a retired Agreement State supervisor from Kentucky under contract and one of the program's health physicists.

Feedback on NRC's Program

Department and Bureau representatives expressed their appreciation for NRC staff's assistance with regard to a number of issues raised over the past year. The Section Supervisor stated that the NUREG 1556 series of program specific guidance documents has been very useful. The Bureau also expressed concern with regard to NRC's decision to extend inspection frequencies (Temporary Instruction [TI] 2800/033).

Department management indicated that the NRC should pursue an interagency program for the exchange or temporary assignment of managers to the States. NRC staff indicated that, to their knowledge, the last time there was a long-term personnel exchange of an NRC staff member with an Agreement State staff member was 20 plus years ago.

Status of Program and/or Policy Changes

A detailed discussion of the program status can be found in Section 2.1 of the follow-up review report. A discussion of the Legislative changes to the program can be found in Section 3.1 of the follow-up review report.

Impact of NRC Program Changes

The NRC representatives discussed security issues, recent changes to the inspection frequencies (TI 2800/033), the forthcoming departure of the Chairman from the Commission and the status of pilot projects with regard to the National Materials Program.

Internal Program Audits and Self-Assessments

With the exception of the bimonthly status reports to the NRC in preparation for the conference calls, the Department managers reported that currently no self-assessments were being performed. It was noted that the Section Supervisor is required to provide weekly status reports to Department management. Department management also noted that the Food and Drug Administration conducted an audit of the Bureau's radiochemistry laboratory. According to Department management, the principal finding was the need to update the lab's equipment.

Status of Allegations Previously Referred

Region I referred one allegation to the Bureau since the 2001 review. The Bureau indicated that an on-site inspection was performed and that the only radioactive material present was an exempt quantity source. The review team concluded that the Bureau's actions were appropriate.

Nuclear Material Events Database (NMED) Reporting

A general discussion was held with the representatives concerning the NMED reporting system. The review team noted that the Bureau had updated and closed out each of three events (one event involved radium and other two involved byproduct material) reported since the 2001 review. The review team indicated that a new field was recently added to indicate if the event was closed by the State. The Bureau was not aware of this change and indicated that they would take appropriate action to update the NMED record.

Radiation Advisory Committee

At the invitation of Department management, the review team attended a regularly scheduled meeting of the State's Radiation Advisory Committee on the evening of February 4, 2003. At the meeting, the review team leader provided an overview of the IMPEP process and follow-up review. The RSAO provided an overview of the liaison functions between the NRC and the States. The Committee expressed their appreciation for the NRC's availability and assistance to the Bureau during the heightened oversight process. The Committee also discussed Bureau staffing, the distribution of potassium iodide tablets to the public, committee membership, the need for fee increases to fund the Bureau, upcoming emergency response exercises, the need to include the ability to issue civil penalties as part of the Bureau's enforcement policy, and the issuance of a letter of introduction as well as the Radiation Advisory Committee's 2002 annual report to the new Governor.

ATTACHMENT

April 28, 2003 Letter from Kathleen A. Dunn, RN, MPH
New Hampshire's Response to Draft Follow-up IMPEP Report

ML031340782

Agenda for Management Review Board Meeting

May 21, 2003, 1:00 p.m. - 3:00 p.m., O-3-B-4

1. MRB Chair convenes meeting. Introduction of MRB members, review team members, Kansas representatives, and other representatives participating through telephone bridge or video conferencing.
2. Consideration of the New Hampshire Follow-up IMPEP Report.
 - A. Presentation of Findings Regarding New Hampshire Program and Discussion.
 - Technical Staffing and Training
 - Status of Materials Inspection Program
 - Legislation and Program Elements Required for Compatibility
 - B. MRB Consultation/Comments on Issuance of Report.
 - Adequacy and Compatibility Rating
 - Recommendation for Next IMPEP Review
 - C. Comments
3. Results of Periodic Meetings
4. Status of IMPEP Reviews and Heightened Oversight/Monitoring Activities
5. Precedents
6. Adjournment

Invitees: Carl Paperiello, EDO
Paul Lohaus, STP
Martin Virgilio, NMSS
Karen Cyr, OGC
William Sinclair, UT
Dennis O'Dowd, NH
Kathleen Schneider, STP
Lance Rakovan, STP

Dennis Sollenberger, STP
Duncan White, RI
Michael Henry, LA
Thomas Hill, GA
Eddie Nanney, TN
Josephine Piccone, STP
Andrew Mauer, STP