



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

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John A. Stephen
Commissioner

Mary Ann Cooney
Director

November 15, 2004

Mr. Paul H. Lohaus, Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Lohaus:

In response to NRC letter dated October 7, 2004, and the findings of Management Review Board meeting held on September 28, 2004, we are enclosing our revised program improvement plan that address the specific concerns raised as a result of the latest Integrated Materials Performance Evaluation Program (IMPEP) review of the state's program. We are also enclosing a status report on our efforts to revise and update the state's regulations required for compatibility.

As is evident from the program improvement plan, activities to address workforce issues, business operations, and adequacy and compatibility issues have continued. The following are updates on the ongoing issues we are addressing in these areas:

- The Radiological Health Section's health physics positions remain fully staffed, and training of the newest staff members in radioactive materials licensing and inspections continues. Rick D'Alarcao, Ph.D., has recently successfully completed the Five-Week Applied Health Physics course offered by Oak Ridge Institute for Science and Education (ORISE), and is currently scheduled to undergo supervisory audits within the next two weeks with the goal of obtaining qualifications to independently conduct Priority 5 inspections. In addition, both he and Debanond Chakraborty (who has already obtained qualifications to independently carry out Priority 5 inspections) will be accompanying a qualified Maine Radiation Control Program (RCP) inspector on inspections over the course of the next several weeks, in order to gain additional field work necessary for full qualifications as inspectors. Their first accompaniment is scheduled for November 18, 2004. In addition, a similar arrangement is being pursued with the Massachusetts RCP. Mr. Asish Banerjee, who holds degrees in engineering, is currently following a program of self-study in evaluating sealed source and device (SS&D), and arrangements are currently being made for him to undergo practical training at the Massachusetts RCP offices working under the tutelage of their qualified SS&D reviewer.
- The Division is continuing its efforts to renew its contract with Vicki Jeffs, Kentucky's former radioactive materials program manager, for conducting license application reviews on behalf of the radiation control program. Likewise, the Division is continuing its efforts to renew its contract with Mario Iannaccone, for conducting inspections of radioactive material licensees on behalf of the program.

- The Division continues to seek a qualified individual to fill the position of Administrator (Radiation Health Physicist V) of the Radiological Health Section. One candidate has already been interviewed, and it is expected that one or two more will be interviewed during the next few weeks.
- Dennis O'Dowd continues to serve as acting administrator and meets with me on a bi-weekly basis. During this time, we review the program's progress, and discuss the prioritizing of work assignments.
- Work continues by the program to adopt and update radiation control rules needed to achieve full compatibility with NRC. New Hampshire equivalent rules to 10 CFR Parts 36 and 39 are expected to be adopted shortly; work continues on the process of reconciling the required NRC rules with the format required by the New Hampshire's Code of Administrative Rules. In addition, as an interim measure and where applicable, additional efforts are being made to appropriately amend licenses to incorporate necessary regulatory revisions as legally binding license conditions.

As is evident, the state is implementing its plans to address the issues raised in the 2004 IMPEP report. Please feel free to call me with any questions. I may be reached directly at 603-271-4521 or via e-mail at abruning@dhhs.state.nh.us. I look forward to our November 23rd conference call.

Sincerely,

Alice Bruning
Chief
Bureau of Prevention Services
Division of Public Health Services

cc: Josephine Piccone, Deputy Director, State and Tribal Programs, NRC
George Pangburn, Region 1 Director, Division Of Nuclear Materials Safety, NRC
Duncan White, Region 1 Regional States Agreement Officer, NRC
John Wallace, Associate Commissioner, DHHS
Mary Ann Cooney, Director of DHHS-DPHS
Members of the State Radiation Advisory Committee [via e-mail]

NRC REGULATIONS REQUIRED FOR COMPATABILITY (OVERDUE)
- STATUS REPORT -
(November 2004)

TITLE	REGULATORY REFERENCE Title 10 Code of Federal Regulations (10 CFR)	FEDERAL REGISTER REFERENCE(S)	EFFECTIVE DATE ¹	STATUS
Timeliness in Decommissioning of Materials Facilities	Parts 30, 40, 70	59 FR 36026	August 15, 1994	Currently under review by the Department's Administrative Rules Unit
Termination or Transfer of Licensed Activities: Recordkeeping Requirements	Parts 20, 30, 40, 61, 70	61 FR 24669	June 17, 1996	Currently under review by the Department's Administrative Rules Unit
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act	Part 20	61 FR 65120	January 9, 1997	Currently under review by the Department's Administrative Rules Unit; interim measure is to address by license condition, currently in preparation
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State	Part 150	62 FR 1662	February 27, 1997	Currently under development.
Criteria for the Release of Individuals Administered Radioactive Material	Parts 20 and 35	62 FR 4120 ²	May 29, 1997	Currently under development.
Radiological Criteria for License Termination	Parts 20, 30, 40, 70	62 FR 39057 ³	August 20, 1997	Currently under review by the Department's Administrative Rules Unit
Deliberate Misconduct by Unlicensed Persons	Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13733	February 12, 1998	Currently under development.
Minor Corrections, Clarifying Changes, and a Minor Policy Change	Parts 20, 35, 36	63 FR 39477; 63 FR 45393 ⁴	October 26, 1998	Currently under development.
Respiratory Protection and Controls to Restrict Internal Exposures	Part 20	64 FR 54543; 64 FR 55524 ⁵	February 2, 2000	Currently under development.
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications	Part 39	65 FR 20337 ⁶	May 17, 2000	Rule adoption expected 11/17/04; NOTE: There are currently no Part 39 licensees in NH
New Dosimetry Technology	Parts 34, 36, 39	65 FR 63749	January 8, 2001	Applies to only two NH licensees; NOTE: Accepted by NRC - legally binding license condition (10/25/04).
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material	Parts 30, 31, 32	65 FR 79162 ⁷	February 16, 2001	Currently under development.
Licensing, Radiation Safety Requirements for Irradiators	Part 36			Currently addressed by license condition; Adoption expected 11/17/04

¹ Agreement States have up to three years from the effective date to adopt compatible regulations.

² Portions of the Part 20 amendment are designated as Category A for compatibility.

³ Parts of this amendment are designated as A or B for compatibility.

⁴ Portions of this amendment are designated as Category A for compatibility.

⁵ Portions of this amendment are designated as Category B for compatibility.

⁶ Portions of this amendment are designated as Category B for compatibility.

⁷ Portions of this amendment are designated as Category B for compatibility.

NRC REGULATIONS REQUIRED FOR COMPATABILITY (NOT OVERDUE⁸)
- STATUS REPORT -
 (November 2004)

TITLE	REGULATORY REFERENCE Title 10 Code of Federal Regulations (10 CFR)	FEDERAL REGISTER REFERENCE(S)	EFFECTIVE DATE ⁹	STATUS
Revision to the Skin Dose Limit	Part 20	67 FR 16298 ¹⁰	April 5, 2002	Not overdue; Currently under review by the Department's Administrative Rules Unit
Medical Use of Byproduct Material	Parts 20, 32, and 35	67 FR 20249 ¹¹	April 24, 2002	Not overdue; plans to begin development by January 2005
Financial Assurance for Materials Licenses	Parts 30, 40, 70	68 FR 57327	December 3, 2003	Not overdue; plans to begin development by June 2005
Compatibility with IAEA Transportation Safety Standards (TS-R-1) and Other Safety Amendments	Part 71	69 FR 3698	October 1, 2004	Not overdue - plans to begin development by June 2005

⁸ The Section will need to address these four regulations in upcoming rule makings or by adopting alternate legally binding requirements.

⁹ Agreement States have up to three years from the effective date to adopt compatible regulations.

¹⁰ Portions of this amendment are designated as as either Category A or B for compatibility.

¹¹ Portions of these amendments are designated as either Category A or B for compatibility.

Revision 11/08/2004

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NEW HAMPSHIRE DEPARTMENT OF HEALTH and HUMAN SERVICES

DIVISION OF PUBLIC HEALTH SERVICES/BUREAU OF PREVENTION SERVICES/RADIOLOGICAL HEALTH SECTION

PROGRAM IMPROVEMENT PLAN

Revision 11/08/2004

<u>Recommendation</u>	<u>Tasks</u>	<u>Milestones</u>	<u>Assignments</u>	<u>Anticipated Completion Date</u>	<u>Status</u>
Performance Indicator: Sealed Source and Device (SS&D) Evaluation Program/Technical Staffing and Training Recommendation 4 <small>(as per MRB letter dated 10/07/04):</small> That the Section modify their training and qualification program to include requirements for individuals to evaluate SS&D applications and sign the registration sheet. <small>(MRB 10/07/04, Section 4.2.1)</small>	Modify staff training and qualifications program to include requirements for individuals to evaluate SS&D applications and sign registration sheets.	Modification underway	DOD	11/30/2004	
	Establish plan for health physicist staff member with degrees in engineering to promptly complete all training and qualification requirements in order to be qualified to conduct SS&D reviews.	Assign self-study program for staff member, utilizing SS&D program manuals and NRC NUREG 1556	DOD/AsB	12/31/2004	Assignment made; self-study training to begun 10/12/2004
		Facilitate training opportunities utilizing assistance from Massachusetts RCP.	DOD	12/31/2004	Arrangements made; on-site training to begin December 2004
Performance Indicator: Program Elements Required for Compatibility Recommendation 2 <small>(as per MRB letter dated 10/07/04)</small> Recommendation 6 from 2001 report): That the Section develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility <small>(MRB 10/07/04, Section 2)</small>	Rules Revision (See rule revision chart attached)	Re-adopt 10 CFR 39 equivalent "Well Logging" (by reference)	DOD	Public hearing held on 10/17/04; Public comment period ended 10/31/04; legislative review scheduled for 11/19/04 with adoption likely within 7 days	JLCAR hearing 11/19/04
		Adopt 10 CFR 36 equivalent "Irradiators" (by reference)	DOD	Public hearing held on 10/17/04; Public comment period ended 10/31/04; legislative review scheduled for 11/19/04 with adoption likely within 7 days	JLCAR hearing 11/19/04
		Where appropriate and applicable, incorporate license conditions as legally binding requirements to address revised regulations	DOD/HP Staff	12/31/2004	in process/on-going task
		Draft rules based on NRC regulations in accordance with compatibility criteria	DOD with HP staff input	Next set to be submitted by 12/31/04	In process
		Hire additional clerk to assist in rules revision	MAC/AB/DOD/HR	6/30/2004	Under consideration

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PROGRAM IMPROVEMENT PLAN					
Revision 11/08/2004					
<u>Recommendation</u>	<u>Tasks</u>	<u>Milestones</u>	<u>Assignments</u>	<u>Anticipated Completion Date</u>	<u>Status</u>
Abbreviations Key					
MAC: Mary Ann Cooney, Director, Division of Public Health Services (DPHS), NH Department of Health and Human Services (DHHS)					
AB: Alice Bruning, Chief, Bureau of Prevention Services (BPS), DPHS, DHHS					
DOD: Dennis O'Dowd, Acting Administrator, Radiological Health Section (RHS), BPS, DPHS, DHHS					
AsB: Asish Banerjee, Health Physicist, RHS, BPH, DPHS, DHHS					
HR: Human Resources, DHHS					
MRB: NRC's Management Review Board					
G&C: Governor & Council					
SS&D: Sealed Source and Device					
NECHPS: New England Chapter of the Health Physics Society					
CRCPD: Conference of Radiation Control Program Directors, Inc.					
RCP: Radiation Control Program					

<u>Completion Date</u>
6/23/2004
9/30/2004
10/15/2004

<u>Completion Date</u>

<u>Completion Date</u>