

March 16, 2006

Mr. Richard B. Bays, Assistant Commissioner
Division of Regulatory Services
Texas Department of State Health Services
1100 West 49th Street
Austin, TX 78756

Mr. Bays:

We have reviewed your Program Improvement Plan (Plan) that was submitted in response to our December 27, 2005 letter. In addition, we have taken into consideration information provided by your staff regarding the Plan, as part of the first heightened oversight call held on February 14, 2006. The minutes from this call are enclosed. We believe the Plan meets the requirements of the heightened oversight process, however, we have the following comments which were discussed with your staff.

1. We request that the Plan be modified to show an endpoint for each recommendation that would bring the Program's performance to a level that would meet a satisfactory rating for the associated Integrated Materials Performance Evaluation Program (IMPEP) indicator. For example, in recommendation 2, the Plan does not address the point (projected date) at which the overdue inspections will be completed and the program will be conducting routine inspections at the required frequencies.
2. We request that future updates on the corrective actions for recommendations 1, 2, 3, and 5, contain exact data on the amount of items completed. For example, in recommendation 2, please give the number of reports issued and the number of those reports issued beyond the 30-day goal since the last heightened oversight call.

Ms. Vivian Campbell, the Region IV, NRC Regional State Agreements Officer (RSAO), will continue to schedule bi-monthly calls with your staff. We request that you submit an updated status of the corrective actions associated with the Plan, two weeks prior to each bi-monthly call. We appreciate the effort and the cooperation that you and your staff have shown during this process. I thank you for your continuing support of the Texas Agreement State radiation control program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

/RA/

Janet R. Schlueter, Director
Office of State and Tribal Programs

Enclosure:
As stated

cc: See next page.

R. B. Bays

March 16, 2006

cc: Eduardo Sanchez, M.D., M.P.H., Commissioner
Texas Department of State Health Services

Michael Ford, Chairman
Texas Radiation Advisory Board

Roger Mulder
State Liaison Officer

Richard A. Ratliff, P.E., L.M.P.,
Radiation Program Officer
Division for Regulatory Services
Texas Department of State Health Services

R. B. Bays

March 16, 2006

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Texas - Heightened Oversight Conference Call Summary

Date of call: February 14, 2006

Participants:

State of Texas

Richard Ratliff, Radiation Control Program Officer

Alice Rogers, Inspection Unit

Tommy Cardwell, Radiation Branch

Bill Silva, Radioactive Materials Group

Bob Free, Environmental Monitoring Group

Cindy Cardwell, Radiation Group, Policy/ Standards/
Quality Assurance

Ruth McBurney, Radiation Safety Licensing Branch,
Regulatory Licensing Unit

Pete Myers, Radioactive Materials Group

Gary Smith, Ph.D., Technical Assessment Group

NRC

Vivian Campbell, SAO, RIV

John Zabko, STP

Aaron McCraw, ASPO, STP

Dennis Rathbun, Deputy Director,
STP

NRC staff opened the call with introductions and a request for a discussion of the Department's program improvement plan (Plan) to address the recommendations in the 2006 IMPEP report.

The NRC staff discussed the following comments on the Plan, and the Texas staff agreed to modify the Plan accordingly.

3. The NRC requests that the Plan be modified to show an endpoint for each recommendation that would bring the Program's performance to a level that would meet a satisfactory rating for the associated Integrated Materials Evaluation Program (IMPEP) indicator. For example, in recommendation two, the Plan does not address the point (projected date) at which the overdue inspections will be completed and the program will be conducting routine inspections at the required frequencies.
4. The NRC requests that future updates on the corrective actions for recommendations 1, 2, 3, and 5, contain exact data on the amount of items completed. For example, in recommendation two, please give the number of reports issued and the number of those reports issued beyond the 30 day goal since the last heightened oversight call.

Below is a summary of the Department's actions since the August 23, 2005 heightened oversight conference call.

Recommendations:

1. The review team recommends that the Department hire and retain sufficient qualified staff to return and maintain the program at a satisfactory performance level.(Section 3.1)

Since the last heightened oversight call, the Texas Legislature approved the new health physicist classification and the appropriations to fund the increased salaries effective September 1, 2005. The reclassification of the Department's technical staff and the resulting increases in salaries became effective January 1, 2006. Additionally, the Department implemented a merit pool at the beginning of fiscal year 2006 to award employees for meritorious service. The Department is also augmenting their formal training program to include a cross-training initiative involving the materials inspectors and the quality assurance reviewers. The cross-training initiative involves the materials inspectors, quality assurance reviewers, and the licensing reviewers.

All technical positions in the Radiation Licensing Group, Policy/Standards/Quality Assurance Group, and Environmental Monitoring Group are filled. The Radioactive Materials Group currently has two materials inspectors in training and anticipates that they will be fully qualified by the end of March 2006. The Radioactive Materials Group also has two materials inspector vacancies, in Houston and Canyon, and the postings have closed. The Radioactive Materials Group manager expects to fill the positions by the end of March 2006. The Technical Assessment Group has a total five vacancies which have been posted. However, the vacancy posting is not attracting qualified candidates even with the salary increase and other retention incentives. The Technical Assessment Group Manager is giving careful consideration to contracting engineering support if they do not receive applications from qualified candidates.

2. The review team recommends that the Department review their process for issuance of inspection letters and develop a process that will allow the 31-day issuance goal for routine cases to be achieved on a consistent basis. (Section 3.2)

The Department has completed the review of their inspection report review process and has made revisions to improve efficiency for issuance of inspection letters. The Policy/Standards/Quality Assurance (PSQA) Group Manager is currently finalizing the new procedure. NRC staff requested that the Department provide data demonstrating the effectiveness of the new procedure on the conference calls, and the State agreed.

The Department also provided information about the status of their overdue inspections. Currently, the program has 46 overdue routine inspections and 20 overdue initial inspections. The Radioactive Material Group Manager stated that all overdue inspections have been assigned and the inspection program is on track to be current by September 1, 2006.

The Department is planning to re-evaluate their inspection frequencies with a goal to make them more consistent with NRC's frequencies. In previous telephone conversations, NRC staff and Department management had discussed a strategy to work off the existing backlog without allowing any additional inspections to become overdue. The Department provided a priority inspection schedule in the PIP to accomplish that goal. However, the NRC staff expressed their concerns about the proposed schedule, specifically the scheduling of initial inspections. NRC's Manual Chapter 2800 states that initial inspections of all new licensees (without regard to Priority) are to be conducted within 12 months from the date the new license was issued. NRC staff suggested that the State re-examine the schedule for initial inspections. In addition, the

NRC staff requested that the State provide the status of the overdue inspections and any new overdue inspections during the scheduled conference calls, and the State agreed.

3. The review team recommends that the State adhere to the policy of annual supervisory accompaniments of all qualified inspectors. (Section 3.3) (Open recommendation from the 2001 IMPEP report)

The Department completed all but one annual accompaniment for calendar year 2005 and management has already assigned the inspector accompaniments to senior staff for calendar year 2006. The Department's goal is to distribute the accompaniments throughout the year. The Radiation Branch Manager plans to monitor the progress on a quarterly basis. The NRC staff requested, and the State agreed, to provide a status of the annual accompaniments at each telephone conference.

4. The review team recommends that the State develop a process to ensure that inspections are performed in accordance with their own performance-based inspection procedures. (Section 3.3)

The Department has established a working group to evaluate the program's inspection procedures manual and review inspection forms to ensure that they contain reminders of the primary components of an inspection including observations and interviews with licensee employees. Any changes will be reviewed with the inspectors and PSQA staff.

5. The review team recommends that the Department report all significant and routine events, as well as follow-up event information, to the NRC in accordance with STP Procedure SA-300, "Reporting Material Events." (Section 3.5) (Open recommendation from the 2001 IMPEP report)

The new Environmental Monitoring Group staff continue to investigate and report significant and routine materials events based on SA-300. The staff have identified issues/concerns with some of the reporting requirements outlined in the procedure. The Department is planning to submit a report to NRC outlining their concerns with the procedure.

6. The review team recommends that the Department develop and implement an inspection program to verify that the QA/QC requirements in the SS&D Registry sheets are being implemented by the manufacturer. (Section 4.2.2)

Department staff has collected information from other states with SS&D programs and NRC regarding their QA/QC inspection programs. The Department has developed a draft procedure for auditing manufacturers' QA/QC programs when source or device incident trends are identified; the Department's lead SS&D reviewer will accompany an inspector when using this audit procedure. The Department is also in the process of adding QA/QC items to be inspected during routine inspections.

7. The review team recommends that the Department conduct an evaluation of the uranium recovery program workload and hire the necessary staff to adequately address the workload. (Section 4.4.1)

The Department has conducted an evaluation of the workload and approved three additional FTEs for the program. As discussed in Item 1, the Department has not received any qualified

candidates as of this conference call. The Department is developing a contingency plan to hire qualified contractors, if necessary.

8. The review team recommends that the Department prepare necessary supporting documentation identifying the bases for the licensing actions associated with reclamation plans for the three conventional mills. (Section 4.4.4) (Open recommendation from the 2001 IMPEP report)

Department management plans to assign this project to new staff. The Department has begun organizing the documentation associated with the reclamation of these three conventional mills in a dedicated file for each licensee to facilitate completion of the project. They plan to prepare the missing documentation for one mill at a time.

Next Conference Call:

The next call has been scheduled for April 10, 2006 at 10:00 am ET (9:00 am CT). The Texas updated information is due to NRC on March 27, 2006.