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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 14, 2004

MEMORANDUM TO:

Martin J. Virgilio, Deputy Executive Director
for Materials, Research and State Programs

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

Jack R. Strosnider, Director
Office of Nuclear Material Safety and Safeguards

FROM:

Karen D. Cyr, General Counsel
Josephine M. Piccone
Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

SUBJECT:

INTEGRATED MATERIALS PERFORMANCE EVALUATION
PROGRAM (IMPEP) 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 IMPEP review of the New Hampshire Radiation Control Program. The review of the New Hampshire program was conducted by an interoffice team during the period of June 21-25, 2004. The team issued a draft report to New Hampshire on July 21, 2004 for factual comment. New Hampshire responded to the findings and conclusions of the review by letter dated August 11, 2004 from Mary Ann Cooney, Director, Division of Public Health Services, New Hampshire Department of Public Health Services (Attachment to the proposed final report).

The review team found New Hampshire's performance to be satisfactory for five performance indicators. The review team found New Hampshire's performance to be satisfactory, but needs improvement for the indicator "Technical Staffing and Training" and unsatisfactory for the indicator "Compatibility Requirements." Based on slow progress to qualify new staff, inability to hire a permanent Administrator and slow progress in adopting compatible State regulations, the review team recommends that the New Hampshire program continue to be "Adequate, But Needs Improvement," and "Not Compatible," and that the program continue on heightened oversight.

The MRB meeting to consider the New Hampshire report is scheduled for **Tuesday, September 28, 2004, from 1:00 p.m. to 3:00 p.m., in One White Flint North, Room O-6-B4.** 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 Kathleen Schneider at 301-415-2320.

Attachments:
As stated

cc: See next page

cc: Mary Ann Cooney, Director
Division of Public Health Services
Department of Health and Human Services

Alice Bruning, Administrator
Division of Public Health Services

Kathryn Frey
Division of Public Health Services

Dennis O'Dowd, Supervisor
Radiological Health Section
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Bruce Cheney, State Liaison Officer
Director, Department of Safety

Roland Fletcher, MD
OAS Liaison to the MRB

INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF NEW HAMPSHIRE AGREEMENT STATE PROGRAM

June 21-25, 2004

PROPOSED FINAL REPORT

U.S. Nuclear Regulatory Commission

ATTACHMENT 1

1.0 INTRODUCTION

This report presents the results of the review of the New Hampshire radiation control program. The review was conducted during the period of June 21-25, 2004, by a review team comprised of technical staff members from the Nuclear Regulatory Commission (NRC) and the Agreement State of Kansas. Team members are identified in Appendix A. The review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of a Final General Statement of Policy," published in the Federal Register on October 16, 1997, and the February 26, 2004, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the review, which covered the period of February 6, 2003 to June 25, 2004 for the indicators Technical Staffing and Training, Status of Materials Inspection Program, and Compatibility Requirements, and the period June 30, 2001 to June 25, 2004 for the other performance indicators were discussed with New Hampshire management on June 25, 2004.

[A paragraph on the results of the Management Review Board (MRB) meeting will be included in the final report.]

Historically, the New Hampshire Agreement State program has been administered by the Bureau of Radiological Health located within the Office of Community and Public Health, Department of Health and Human Services (the Department) as described in the 2003 follow-up IMPEP review. The Department Commissioner is appointed by and reports to the Governor. To increase efficiency, the Department was reorganized on July 1, 2004. Under the reorganization, the Radiological Health Section (the Section) is located in the Bureau of Prevention Services (the Bureau), Division of Public Health Services (the Division), Office of Program Operations, within the Department. The new organization charts for the Department, Division, and Section are included as Appendix B. The New Hampshire Agreement State program was in transition to the new organization during the week of the on-site portion of the review. The review team used the new organization names and titles in this report even though the Agreement State program operated as a Bureau instead of a Section during the review period.

In preparation for the review, a questionnaire addressing the common and non-common performance indicators was sent to the State on April 2, 2004. The Section provided a response to the questionnaire on June 14 and June 18, 2004. A copy of the questionnaire response can be found on NRC's Agency-wide Document Access and Management System using the Accession Numbers ML 041900333 and ML 041900390.

At the time of the follow-up review, the New Hampshire Agreement State program regulated approximately 79 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.

The review team's general approach for conduct of this review consisted of: (1) examination of New Hampshire's response to the questionnaire; (2) review of applicable New Hampshire statutes and regulations; (3) analysis of quantitative information from the Section's licensing and inspection data base; (4) technical evaluation of selected licensing and inspection actions; (5) field accompaniments of a New Hampshire inspector; and (6) interviews with staff and

management to answer questions or clarify issues. The team evaluated the information that it gathered against the IMPEP performance criteria for each common and applicable non-common performance indicator and made a preliminary assessment of the radiation control program's performance.

Section 2 below discusses the State's actions in response to recommendations made following the previous IMPEP review and the team's conclusions regarding close out of the recommendations. Results of the current review for the IMPEP common performance indicators are presented in Section 3. Section 4 discusses results of the applicable non-common performance indicators, and Section 5 summarizes the review team's findings and recommendations. Recommendations made by the review team are comments that relate directly to program performance by the Division. A response is requested from the Division to all recommendations in the final report.

2.0 STATUS OF ITEMS IDENTIFIED IN PREVIOUS REVIEWS

During the previous IMPEP review, which concluded on June 29, 2001, six recommendations were made and transmitted to Donald L. Shumway, Commissioner, Department of Health and Human Services on November 6, 2001. During the follow-up IMPEP review which concluded on February 6, 2003, two recommendations were closed (Numbers 1 and 3 from the 2001 report). The final follow-up report was transmitted to Ms. Dunn on June 11, 2003. The team's evaluation of the current status of all open recommendations is as follows:

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)

Current Status: The Section has taken the appropriate management measures to conduct inspections in accordance with their assigned inspection frequencies. At the time of the review, there were no overdue inspections and the inspection backlog had been eliminated. The Radioactive Materials Program Supervisor has also developed a five-year inspection management plan. This recommendation is closed.

2. 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)

Current Status: Since the 2003 follow-up IMPEP review, the two vacant staff positions were filled. The Department received approval for a new Radiation Health Physicist series that provides increased salary potential and an extended career ladder. This new series should help with staff hiring and retention. With the implementation of the new fees system on July 1, 2003, all Section positions are fee supported and, as such, they are not subject to the State-wide hiring freeze. On June 23, 2004, the Division received final approval for the salary upgrade and reclassification of the Section Administrator position. This position was known as the Bureau Administrator prior to the reorganization. The review team believes that the Department has taken the necessary

actions to address the staff turnover and staff vacancies. This recommendation is closed.

3. 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)

Current Status: As noted in the 2003 follow-up IMPEP review, the practice of rotating staff on a routine basis was discontinued. With the retirement of the Radioactive Machines Program Supervisor, the Radioactive Materials Program Supervisor assigns work to the staff, as necessary. However, the two new staff members have mainly worked in the Radioactive Machines Program and need to complete their qualifications as license reviewers and inspectors within the Radioactive Materials Program (See Section 3.1). With the reclassification of the Section Administrator position from an Administrator II to a Health Physicist V, the Department will begin recruiting for this permanent position. A new reorganization went into effect on July 1, 2004. Two staff members who were transferred to the Department of Safety in January 2004 returned to the Section. Continuation of contractor support after June 30, 2004 (in both licensing and inspection activities) for the Radioactive Materials Program is under evaluation by Department management.

Until a permanent Section Administrator is hired and the Section has a period of satisfactory performance under the new organization without contract support, the review team believes that the program is still fragile and needs additional time to implement the new organization, complete new staff qualification, and stabilize program performance with permanent staff. This recommendation is open.

4. 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)

Current Status: The Division has taken limited action to adopt overdue regulations due to focusing efforts of existing staff and contractors on improvements to the licensing and inspection programs. The Section Administrator vacancy significantly impacts this indicator since historically this individual has had the responsibility for rulemaking. Since the 2003 follow-up IMPEP review, the Department has adopted two regulations required for compatibility and has prepared six additional amendments presently under review with the Department's Bureau of Legal Services and Regulation. See additional discussion in Section 4.1. This recommendation remains open.

3.0 COMMON PERFORMANCE INDICATORS

IMPEP identifies five common performance indicators to be used in reviewing both NRC Regional and Agreement State programs. These indicators are: (1) Technical Staffing and Training (2) Status of Materials Inspection Program; (3) Technical Quality of Inspections; (4) Technical Quality of Licensing Actions; and (5) Technical Quality of Incident and Allegation Activities.

3.1 Technical Staffing and Training

Issues central to the evaluation of this indicator include the Section'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 Section's questionnaire response relative to this indicator, interviewed Division and Section management and staff, reviewed job descriptions and training records, and considered any possible workload backlogs.

There have been a number of staff and organizational changes impacting the Section since the February 2003 follow-up IMPEP review. The Section is authorized for ten positions under the new organization. These positions include the Section Administrator, Radioactive Materials Program Supervisor (the Supervisor), Radiation Machine Program Supervisor, five Radiation Health Physicists, Program Planner, and two administrative support staff.

The Section has experienced staff turnover through retirements and transfers since the 2003 follow-up review that continue to impact performance of the Section. The Section Administrator position has been vacant since April 2002. The Radiation Machine Supervisor retired in April 2004 and the Supervisor has been acting in both positions in addition to his routine duties. In August 2003, the radiochemistry laboratory and environmental monitoring program was transferred to Public Health Laboratories within the Department. Three positions, including a health physicist position funded by the Centers for Disease Control and Prevention (CDC) for bioterrorism were transferred along with the radiological emergency program to the Department of Safety. With the July 2004 reorganization, two radiological emergency positions have been transferred back to the Section.

The Section reported that 2.3 FTE were utilized by the Section, which includes management time but excludes the efforts for radiological emergency response and contract support for the licensing and inspection programs. The Section reported approximately 0.2 FTE for contract support for the licensing and inspection programs during the past fiscal year which expired on June 30, 2004. Due to State liability constraints, the Division is exploring the viability of renewing the contract support for the fiscal year that began on July 1, 2004.

Successful candidates for technical positions at the entry level are required to have a bachelor's degree in science and a master's degree or additional radiation related work experience and training for positions beyond entry level. The team noted that all of the staff satisfied the degree requirements when hired. At the present, two of the four technical staff perform the majority of the licensing and compliance activities with support from the contractors. One health physicist (senior staff member) and the Supervisor are fully qualified as inspectors and license reviewers. The two newest staff members dedicate the majority of their time to the Radiation Machine Program. Although hired in July and August 2003 respectively, both new staff members have taken several of the required courses during the past year, but have had limited casework and field time to support achieving qualification as independent license reviewers and inspectors in the Radioactive Materials Program. The senior staff member is currently performing the majority of the licensing reviews. The other experienced health physicist is qualified to conduct inspections of most categories of licensees in the State and conducts the majority of the inspections; however, there are still categories of license inspections that additional field work is required for full qualifications as an inspector. The individual is currently undergoing training in these areas. The individual has not yet received

any qualifications as a license reviewer, but is also undergoing training towards licensing qualifications.

As noted in the 2003 follow-up IMPEP report, New Hampshire finalized their training and qualification policy and supporting documentation following NRC Manual Chapter (MC) 1246. The health physicist hired in 2002 is currently being qualified under this policy and, as noted above, has achieved qualifications as an inspector for the majority of license categories. The review team discussed with the Supervisor additional enhancements for casework to establish qualification as a license reviewer. With the limited number of licensees available to New Hampshire, the review team discussed with the Supervisor the need to develop innovative approaches to provide relevant casework and on-the-job training for staff. Training support from surrounding Agreement States or NRC Region I could supplement the available casework to accelerate the qualification process for all staff conducting materials activities.

The Supervisor stated that the four Health Physicists are expected to divide their activities equally between the Radioactive Materials Program and the Radiation Machine Program once all training and qualification requirements are complete. The review team noted that the loss of the senior staff member or the Supervisor could have an adverse effect on the radioactive materials program until all technical staff are fully trained and qualified. The review team recommends that the Section establish a plan for the new staff to promptly complete all training and qualification requirements in order to be qualified as independent license reviewers and inspectors.

The Section receives advice from the Radiation Advisory Committee, which the Section Administrator is an *ex-officio* member and by statute holds the position of the Technical Secretary. The review team identified no conflict of interest concerns.

Since April 2002, the Department conducted nationwide searches for the Section Administrator position. Although their searches found qualified staff, two offers for the Administrator position were declined due to low salaries. On June 23, 2004, the Governor and his Executive Council approved reclassification of the Section Administrator position from an Administrator II position to a Radiation Health Physicist V position so that New Hampshire can competitively recruit in the health physics community. The Department is again initiating its search and is expecting to attract qualified candidates with the increased salary in order to fill this position.

In early January 2003, the recently elected Governor froze all vacant positions including the Section Administrator position. On July 1, 2003, the new fee structure was adopted and since then the Section has been fully funded without general funds. The vacant positions are now fee supported and, as such, they are not subject to the hiring freeze. However all vacant positions undergo a Department administrative review before a waiver is granted to fill the position. A waiver was granted on June 17, 2004 to fill one of the vacant administrative staff positions.

With the adoption of the new fee system, funds are available for out of state travel for training purposes and the contract support for the program. Approval for out of state travel must still undergo Department administrative approval. Each of the new staff members have attended several courses in 2003 and are scheduled for additional training. One new staff member will be attending the Five-week Health Physics course held in Oak Ridge, Tennessee.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory, but needs improvement.

3.2 Status of Materials Inspection Program

The team focused on five factors in reviewing this indicator: inspection frequency, overdue inspections, initial inspection of new licensees, the timely dispatch of inspection findings to licensees, and the performance of reciprocity inspections. The evaluation is based on the Section's questionnaire response relative to this indicator, data gathered independently from the Section's licensing and inspection data tracking system, the examination of completed licensing and inspection casework, and interviews with managers and staff.

A review of the Section's inspection priorities revealed that the inspection frequencies for various types of licenses are at least as frequent as similar license types listed in the November 25, 2003 revision to MC 2800 including performing initial inspections within one year of license issuance. The Section utilizes an inspection tracking spreadsheet and the Supervisor has developed a five-year inspection management plan.

In response to the questionnaire, the Section indicated that no inspections were currently overdue by more than 25 percent of the NRC frequency. The team reviewed lists of information for all inspections conducted and all new licenses issued during the period and verified this information. During this period, the Section had 21 core licenses, including eight new licenses. Several inspections were completed early with the assistance of a contractor to provide the Section the opportunity to complete other responsibilities including training new staff. Three routine core inspections were conducted to eliminate the backlog identified in February 2003. The Section's efforts to address and correct the inspection backlog are commendable.

The review team evaluated the timeliness of the communication of inspection results to the licensees by reviewing inspection data and files for 15 inspections since the follow-up review. Ten inspection results were communicated within 30 days after the date of the inspection. Four of the reports were issued between six and 42 days overdue. One complex inspection with multiple violations conducted in November 2003 still has not been issued. The Section has been in communication with this licensee to address some of the identified violations through an amendment to the license. However, in discussions with the review team, the Section stated that the inspection report will be issued shortly.

The review team determined that the Section granted 13 core reciprocity licenses during the review period. The Section satisfied the 20 percent criteria prescribed in MC 1220 by conducting five inspections of core reciprocity licensees during the review period.

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

3.3 Technical Quality of Inspections

The review team evaluated field interview forms, inspection reports, and enforcement referrals for 12 radioactive materials inspections conducted during the review period. The review team also interviewed inspectors to clarify casework information. The casework reviewed included inspections conducted by three current and one former Section inspector (including one contractor), and covered inspections of various types including industrial radiography, medical institution - written directive required, brachytherapy, irradiator greater than 10,000 curies, academic type A broad scope, and manufacturing. Appendix C lists the inspection casework files reviewed for completeness and adequacy with case-specific comments.

Based on the casework file reviews, the review team found that routine inspections covered all aspects of each licensee's radiation protection program. The inspection reports were thorough, complete, consistent, and of high quality, with sufficient documentation to ensure that licensee's performance with respect to health and safety was acceptable. The documentation adequately supported any cited violations. Exit interviews were held with appropriate licensee personnel. Team inspections were performed when appropriate and for training purposes. The inspection procedures utilized by the Section were consistent with inspection guidance in MC 2800.

The Supervisor generally conducts supervisory accompaniments of material inspectors once a year. The team determined that the Section's senior staff member had not been accompanied for two years. The team discussed this issue with staff and determined that this inspector was primarily focused on licensing casework during this period. The Supervisor indicated that in the future, all inspectors will be accompanied annually. Supervisory accompaniments are documented in the inspection reports.

The review team accompanied one Section inspector on June 9, 2004 during an inspection at a medical institution which is identified in Appendix C. During the accompaniment, the inspector demonstrated appropriate performance-based inspection techniques and knowledge of the regulations. The inspector was well prepared and thorough in his review of the licensee's radiation safety program. The inspection was adequate to assess radiological health and safety at the licensed facility.

The Section has an adequate number and selection of survey meters to support the current inspection program as well as for responding to incidents and emergency conditions. The Section has contractors who calibrate their survey instruments on an annual basis. Prepared emergency field kits are also available for emergency use. The Section also has a well equipped analytical laboratory including a liquid scintillation counter, intrinsic germanium detectors coupled to multichannel analyzers and a low background beta-gamma counter. The laboratory also has the capacity to analyze wipes, water samples, soil samples and other environmental media.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Technical Quality of Inspections, be found satisfactory.

3.4 Technical Quality of Licensing Actions

The review team examined completed licensing casework and interviewed the staff for 12 specific licenses. Licensing actions were evaluated for completeness, consistency, proper isotopes and quantities used, qualifications of authorized users, adequate facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions. Licenses were evaluated for overall technical quality including accuracy, appropriateness of the license, its conditions, and tie-down conditions. Casework was evaluated for timeliness; adherence to good health physics practices; reference to appropriate regulations; documentation of safety evaluation reports, product certifications or other supporting documents; consideration of enforcement history on renewals; pre-licensing visits; peer or supervisory review as indicated; and proper signature authority. The files were also checked for retention of necessary documents and supporting data.

Licensing casework was selected to provide a representative sample of licensing actions that were completed during the review period. The sampling included the following types of licenses: research and development, industrial radiography, medical (institution and private practice), portable gauge, fixed gauge and broad scope academic. Licensing actions selected for evaluation included one new license, two renewals, eight amendments and one termination. A list of the licenses evaluated with case-specific comments can be found in Appendix D.

Overall, the review team found that the licensing actions were thorough, complete, consistent, and of acceptable quality with health and safety issues properly addressed. License tie-down conditions were stated clearly, backed by information contained in the file, and are inspectable. The licensee's compliance history was taken into account when reviewing renewal applications and amendments. The senior staff member properly used appropriate licensing guides and standard license conditions.

The Section performed reviews on seven new license applications, 10 license terminations and 383 other licensing actions during the review period. The team reviewed one license authorizing a 13,000 Ci irradiator of cesium-137, which appears to not be fully compliant with the requirements of 10 CFR Part 36 by license condition, procedural commitments, or regulation. The review team recommends that the Section immediately take action to bring the irradiator licensee into full compliance with 10 CFR Part 36 by adopting regulations compatible with 10 CFR Part 36, by license condition, procedural commitments, regulation, or other legally binding requirements. See Section 4.1 for further discussion on regulation adoption.

All licensing actions are reviewed by the senior staff member who closely monitors the timeliness of licensing actions. All completed licensing actions are then reviewed by the Supervisor, who as acting Section Administrator signs all licensing documents. The team also found that terminated licensing actions were adequately documented. In general, the files included the appropriate material transfer records and survey records. No potentially significant health and safety issues were identified except with the following observation. There was a commitment made by the Section during the 2001 IMPEP to ensure financial assurance is provided for the two academic broad scope licensees authorized to possess radioactive material in quantities requiring financial assurances. It was noted in 2001 that these licensees did not actually possess quantities of radioactive materials requiring financial assurance. The Section agreed to have the licensees either submit financial assurance or reduce the authorized

possession limits of radioactive material. Financial assurance has been received for one of the licensees, but there is no documentation in the file to suggest an amendment has been performed to reduce the possession limits of radioactive material or demonstrate financial assurance for the second licensee. During the review, the Supervisor discussed this issue with the licensee who is presently undergoing license renewal.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

3.5 Technical Quality of Incident and Allegation Activities

In evaluating the effectiveness of the Section's actions in responding to incidents, the review team examined the Section's response to the questionnaire relative to this indicator, reviewed the incident reports for New Hampshire in the Nuclear Material Events Database (NMED) against those contained in the Section's files, and evaluated reports and supporting documentation for nine incidents. A list of the incident casework examined with case-specific comments is included in Appendix E. The review team also reviewed the Section's response to three allegations involving radioactive material, including one allegation referred to the State by the NRC during the review period.

The incidents selected for review included the following event categories: medical misadministration, radiation overexposure, loss of radioactive material, abandoned radioactive material and transportation. The review team found that the Section's response to incidents was complete and comprehensive. Initial responses were prompt and well-coordinated, and the level of effort was commensurate with the health and safety significance. The Section dispatched inspectors for on-site investigations when appropriate, and took suitable enforcement and follow-up actions. The Section's response efforts were generally well documented in the incident files and sometimes included pictures and time lines.

The responsibility for initial response and follow-up actions to materials incidents is assigned to one or more of the Section's health physicists. Upon receipt, staff reviews the report with the Supervisor or the senior staff member and decide on the appropriate response. Reports are given a unique tracking number. Documentation related to an incident is either placed in the appropriate license file or if no specific licensee is involved, the report is placed in a general incident file.

In response to the questionnaire, the Section reported that none of the radiological incidents met the criteria for reporting to NRC. Prior to the on-site review, the team queried the NMED database and identified nine incidents reported by the Section. Further evaluation by the team concluded that four of the incidents did require reporting to NRC. During the on-site review, a review of the Section incident files identified an additional five reports that were submitted to the NMED contractor but were not included in the national database since the incidents involved NARM and did not involve lost or stolen radioactive material. No additional incidents in the Section's incident files required reporting.

For a majority of the review period, one individual was assigned the task of submitting incident reports to the NMED contractor. With the departure of this individual from the Section earlier

this year, the responsibility for submitting reportable events to NRC has been assigned to another individual in the Section. The Section did not use the NMED local database due to technical issues, but these have been recently resolved and the Section plans to start using the NMED local database to track all events.

In evaluating the effectiveness of New Hampshire's actions in responding to allegations, the review team examined the Section's questionnaire response relative to this indicator, and the Section's allegation procedure. The casework for all three allegations received by the Section was reviewed. One allegation was referred to the State by the NRC and two were reported directly to the Section. The Section evaluates each allegation and determines the proper level of response. The review of the casework indicated that the Section took prompt and appropriate action in response to the concerns raised. Each of the allegations reviewed were appropriately closed, and the allegeders were informed of the results, when possible. The documentation for one of the allegations could not be located at the time of the review, but the team concluded that the Section's response was appropriate based on discussions with the NRC Regional Office at the conclusion of the Section's investigation. There were no performance issues identified from the review of the casework documentation.

The review team noted that New Hampshire's Right to Know law requires that all public documents be made available for inspection and copying; however, the State does have the discretion to withhold sensitive information. The State can protect an allegeder's identity.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

4.0 NON-COMMON PERFORMANCE INDICATORS

IMPEP identifies four non-common performance indicators to be used in evaluating Agreement State programs: (1) Compatibility Requirements; (2) Sealed Source and Device Evaluation Program; (3) Low-Level Radioactive Waste Disposal Program; and (4) Uranium Recovery Program. New Hampshire's Agreement does not cover a uranium recovery program, so only the first three non-common performance indicators were applicable to this review.

4.1 Compatibility Requirements

4.1.1 Legislation

In evaluating this indicator, the team reviewed the Section's response to the questionnaire relative to this indicator and copies of legislation, and held discussions with the Supervisor and Division management. The Department is authorized as the State's radiation control agency under the New Hampshire Revised Statutes Annotated (RSA) 1990, Chapter 125. Legislation that affects the Section includes RSA 125-F:1-25, Radiological Health Program; RSA 107-B, Civil Defense Act; and RSA 125 B: 1, New England Compact Radiological Health Protection. The legislation for the Radiological Health Program was amended in 2003 to authorize the collection of fees to cover the cost of the program and the Civil Defense Act was amended to change the designated agency.

4.1.2 Program Elements Required for Compatibility

The New Hampshire Rules for Control of Radiation pertaining to radiation control 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 examined the procedures used in the Section's regulatory process and found that the public, licensees, and other interested parties are offered an opportunity to comment on proposed regulations. The NRC is provided with drafts for comment. After preparation of a package of draft regulations by the Section, the draft regulations are reviewed by the Department's Administrative Rules Unit prior to approval by the Department Commissioner. Final approval of all regulations is done by the Joint Legislative Committee on Administrative Rules. Rule promulgation typically requires six to 12 months. Final regulations in New Hampshire are subject to a sunset law and rules expire exactly eight years after adoption. After expiration, these regulations must be resubmitted in their entirety to remain in effect.

The team evaluated the Section's response to the questionnaire relative to this indicator, reviewed the status of regulations required to be adopted by the State under the Commission's adequacy and compatibility policy, and verified the adoption of regulations with data obtained from the NRC's Office of State and Tribal Program's (STP) Regulations Assessment Tracking System.

The 2001 IMPEP review of the New Hampshire program determined that 13 NRC amendments required for compatibility had not been adopted. Eight of these amendments had not been adopted in a time frame of less than three years after the effective date of their adoption by the NRC in accordance with the Commission's adequacy and compatibility policy and thus would be adopted overdue. The 2001 review team and MRB found the State's performance for this indicator to be unsatisfactory. As discussed in Section 2.0, the 2001 review team made a recommendation that the Section develop and implement an action plan to adopt NRC regulations in accordance with the current Commission policy on adequacy and compatibility. The State's Program Improvement Plan presented to the NRC in December 2001 included specific milestones for steps toward the adoption of NRC regulations required for compatibility.

During the 2003 follow-up IMPEP review, the Section had 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. Preparing draft regulations and moving them through the administrative process is a responsibility of the Section Administrator. As noted in Section 3.1, this position has been vacant since April 2002. The number of overdue NRC amendments increased from eight to 11 and the total number of NRC amendments not adopted increased from 13 to 16.

The 2003 follow-up IMPEP review team also noted that 16 of the 40 regulations that comprise the radiation regulations had expired, including six important to the Agreement State Program. The expired sections included: 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. The team expressed concern that these expired regulations might impact the State's ability to implement a complete regulatory program. In their April 28, 2003 response to the draft follow-up IMPEP report, the State submitted a rulemaking schedule to address regulation adoption in several phases and assigned a staff member to work on the rulemaking. Since the 2003 follow-up IMPEP review, the State adopted the six expired regulations in a rule package in September 2003.

During the bimonthly teleconference calls held July 24, 2003, September 25, 2003 and December 4, 2003 after the 2003 follow-up IMPEP review, the Division management and staff indicated that the State was on schedule to complete the draft rulemaking package to address all overdue NRC amendments by April 30, 2004. During the February 5, 2004 teleconference call, Section staff indicated that the State was attempting to meet its April 30, 2004 schedule with the exception of the medical amendments. The Division staff noted during the April 19, 2004 teleconference call that the previous momentum on all overdue and due regulations had been slowed by the significant workload in the Section and a State reorganization that included transferring two Section staff members to the Department of Safety. The September 2003 regulation adoption, mentioned in the previous paragraph, included two overdue NRC amendments. At the time of this review, the draft regulations for six NRC amendments were under review by the Department's Administrative Rules Unit with an anticipated final adoption by the end of 2004. Eight additional NRC amendments are currently being developed by the Section.

The following 13 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 Section will need to promptly address these regulations in upcoming rule making or by adopting alternate legally binding requirements.

- "Licensing and Radiation Safety Requirements for Irradiators," 10 CFR Part 36 amendment (58 FR 7715) that became effective July 1, 1993. This amendment applies to one licensee. The Section plans to immediately adopt legally binding requirements to address this amendment (see Section 3.4 for details).
- "Timeliness in Decommissioning of Materials Facilities," 10 CFR Parts 30, 40 and 70 amendments (59 FR 36026) that became effective August 15, 1994. This amendment is currently under review by the Department's Administrative Rules Unit.
- "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. This amendment is currently under review by the Department's Administrative Rules Unit.
- "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. This amendment is currently under review by the Department's Administrative Rules Unit.

- “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. This amendment is currently being developed by the Section.
- “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. This amendment is currently being developed by the Section.
- “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. This amendment is currently under review by the Department’s Administrative Rules Unit.
- “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. This amendment is currently being developed by the Section.
- “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. This amendment is currently being developed by the Section.
- “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. This amendment is currently being developed by the Section.
- “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. This amendment is currently being developed by the Section. The State currently has no licensees requiring this amendment.
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendments (65 FR 63749) that became effective January 8, 2001. This amendment is currently under review by the Department’s Administrative Rules Unit.
- “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. This amendment is currently being developed by the Section.

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

- “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. This amendment is currently under review by the Department’s Administrative Rules Unit.
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249) that became effective April 24, 2002. Portions of these amendments are designated as either Category A or B for compatibility.
- “Financial Assurance for Materials Licenses,” 10 CFR Parts 30, 40 and 70 amendments (68 FR 57327) that became effective December 3, 2003.
- “Compatibility with IAEA Transportation Safety Standards (TS-R-1) and Other Safety Amendments,” 10 CFR Part 71 amendments (69 FR 3698), that will become effective on October 1, 2004.

The review team determined that, at the time of the review, the State has not adopted 17 NRC amendments to regulations required for compatibility. Thirteen 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. The remaining four regulations will need to be adopted starting in April 2005. Six of the overdue NRC amendments are designated as Compatibility Category A or B, as indicated above. Although there are currently draft regulations for six NRC amendments in the administrative adoption process and the State has made progress since the 2003 follow-up review, the State continues to adopt most NRC amendments after the three-year effective date of the NRC’s final rule. Based on the State’s performance, the review team considers the recommendation in Section 4.1.2 of the 2001 IMPEP report still open.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire’s performance with respect to the indicator, Compatibility Requirements, be found unsatisfactory.

4.2 Sealed Source and Device (SS&D) Evaluation Program

In assessing the New Hampshire SS&D evaluation program, the review team examined the information provided in the response to the IMPEP questionnaire relative to this indicator. The team evaluated the one new SS&D registry sheet issued during the review period, and the supporting document files. The team also evaluated the use of guidance documents and procedures, and interviewed the staff currently conducting SS&D evaluations.

4.2.1 Technical Staffing and Training

The last SS&D registration sheet with byproduct material was issued by the State in 1986. A second SS&D sheet with accelerator produced material was issued in 1994. Due to the Section’s lack of experience in the evaluation of SS&D applications, the technical review of the SS&D application received by the Section during the review period was conducted by two SS&D reviewers with extensive experience, one currently employed by the Commonwealth of Massachusetts and the second reviewer recently retired from the Commonwealth of Kentucky. The individual from Massachusetts is fully qualified to review SS&D applications in accordance with Massachusetts’ training policy. The other individual was fully qualified to review SS&D

applications prior to retirement in accordance with Kentucky's training policy. A portion of the technical review was also conducted by one of the Section's health physicists who is also a licensed metallurgical engineer.

The review team evaluated the qualifications of the two individuals who signed the registration certificate. The Supervisor participated in the review of the 1994 sheet and met the minimum qualifying criteria with a bachelor's of science degree in Biology and attendance at NRC's SS&D workshop. The second individual did not have any prior experience or formal training with SS&D evaluations. With the uncertainty in obtaining other Agreement State or contractor support for future evaluations, the team discussed the need for a second qualified individual to review SS&D applications and sign the registration sheets. The Supervisor indicated that the individual with the engineering background would probably be sent to the next SS&D Workshop offered by the NRC.

The team also reviewed the Section's training policy and determined that the policy did not include requirements for SS&D reviewers. The review team recommends that the Section modify their training and qualification program to include requirements for individuals to evaluate SS&D applications and sign the registration sheets.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the sub-indicator, Technical Staffing and Training, be found satisfactory, but needs improvement.

4.2.2 Technical Quality of the Product Evaluation Program

The review team evaluated the one new SS&D application that the Section completed during the review period. Specific comments regarding the team's review can be found in Appendix F.

The SS&D reviewers reported that they used the guidance in NUREG-1556, Volume 3. The team's review of the casework, and interviews with the staff, confirmed that the Section followed the NRC SS&D guidance. Appropriate standards and Regulatory Guides were available and used when performing the review. The documentation for the evaluation is kept in the license's docket folder for the manufacturer. As noted in Appendix F, some of the documentation was not available for team's review.

The depth and scope of the product evaluation was good. The team noted that the SS&D checklist was used to generate a detailed and thorough deficiency letter. The review team did not identify any missed health and safety issues in the reviewed application.

The team also identified two registration sheets issued by the State in 1986 and 1994. Both manufacturers are no longer in business and no sources distributed under their licenses are still in use. The Supervisor initiated the process to inactivate both sheets.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the sub-indicator, Technical Quality of the Product Evaluation Program be found satisfactory.

4.2.3 Evaluation of Defects and Incidents Regarding SS&D

There were no defects or incidents for this device.

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the sub-indicator Evaluation of Defects and Incidents Regarding SS&D, be found satisfactory.

4.2.4 Summary

Based on the IMPEP evaluation criteria, the review team recommends that New Hampshire's performance with respect to the indicator, Sealed Source and Device Evaluation Program, be found satisfactory.

4.3 Low-Level Radioactive Waste (LLRW) Disposal Program

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement" to allow a State to seek an amendment for the regulation of LLRW as a separate category. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need of an amendment. Although New Hampshire has such disposal authority, NRC has not required States to have a program for licensing a disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, they are expected to put in place a regulatory program which will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in New Hampshire. Accordingly, the review team did not evaluate this indicator.

5.0 SUMMARY

As noted in Sections 3 and 4 above, the review team found New Hampshire's performance to be satisfactory with respect to the indicators, Status of Materials Inspection Program, Technical Quality of Inspections, Technical Quality of Licensing Actions, Technical Quality of Incident and Allegation Activities, and SS&D Evaluation Program. The team found New Hampshire's performance to be satisfactory, but needs improvement, for the indicator, Technical Staffing and Training. The team found New Hampshire's performance to be unsatisfactory for the indicator, Compatibility Requirements. Accordingly, the review team recommends that the New Hampshire Agreement State Program be found adequate, but needs improvement, and not compatible with NRC's program. The review team recommends that the period of Heightened Oversight be continued to assess the progress of the State in implementing corrective actions. The State should update their Program Improvement Plan, which addresses the recommendations as mentioned in earlier sections of the report, and listed below.

1. The review team recommends that the Section examine and change the business processes and organization of the Section to improve the effectiveness and efficiency of the program. (Section 2) (Recommendation 5 from the 2001 report)

2. The review team recommends that the Section develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility. (Section 2) (Recommendation 6 from the 2001 report)
3. The review team recommends that the Section establish a plan for the new staff to promptly complete all training and qualification requirements in order to be qualified as independent license reviewers and inspectors. (Section 3.1)
4. The team recommends the Section immediately take action to bring the irradiator licensee into full compliance with 10 CFR Part 36 by adopting regulations compatible with 10 CFR Part 36, by license condition, procedural commitments, regulation or other legally binding requirements. (Section 3.4)
5. The review team recommends that the Section modify their training and qualification program to include requirements for individuals to evaluate SS&D application and sign the registration sheet. (Section 4.2.1)

LIST OF APPENDICES AND ATTACHMENT

Appendix A	IMPEP Review Team Members
Appendix B	New Hampshire Organization Charts
Appendix C	Inspection Casework Reviews
Appendix D	License Casework Reviews
Appendix E	Incident Casework Reviews
Appendix F	Sealed Source and Device Casework Review
Attachment	August 11, 2004 Letter from Mary Ann Cooney New Hampshire's Response to Draft IMPEP Report

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Kathleen Schneider, STP	Team Leader Technical Staffing and Training Status of Materials Inspection Program
Duncan White, Region I	Technical Quality of Inspections Inspector Accompaniment Technical Quality of Incident and Allegation Activities Compatibility Requirements Sealed Source and Device Evaluation Program
James Harris, Kansas	Technical Quality of Licensing Actions

}

APPENDIX B
NEW HAMPSHIRE ORGANIZATION CHARTS
ML041910052

Department of Health and Human Services

John A. Stephen
Commissioner

Office of Commissioner
Public Affairs & Government Relations Unit

- Bureau of Communications
- State & Federal Government Relations
- Public Information Office

Office of Commissioner
Human Resource Unit

- Bureau of Organizational Development and Program Performance Measurement
- Bureau of Human Resource Management

Office of Commissioner
Operations Support Unit

- Bureau of Continuous Improvement and Integrity (CII)
- Bureau of Legal Services and Regulation (LSR)
- Ombudsman
- Administrative Hearings and Appeals

Office of the Commissioner
State Medical Director

- Dental Outreach Director
- Substance Abuse Director

Office of Business Operations (OBO)

- Bureau of Finance
- Bureau of Provider Relationship Management (PRM)
- Bureau of Facilities and Assets Management (FM)

Office of Program Operations (OPO)
Director
Vacant

Minority Health

Program Divisions

District Offices

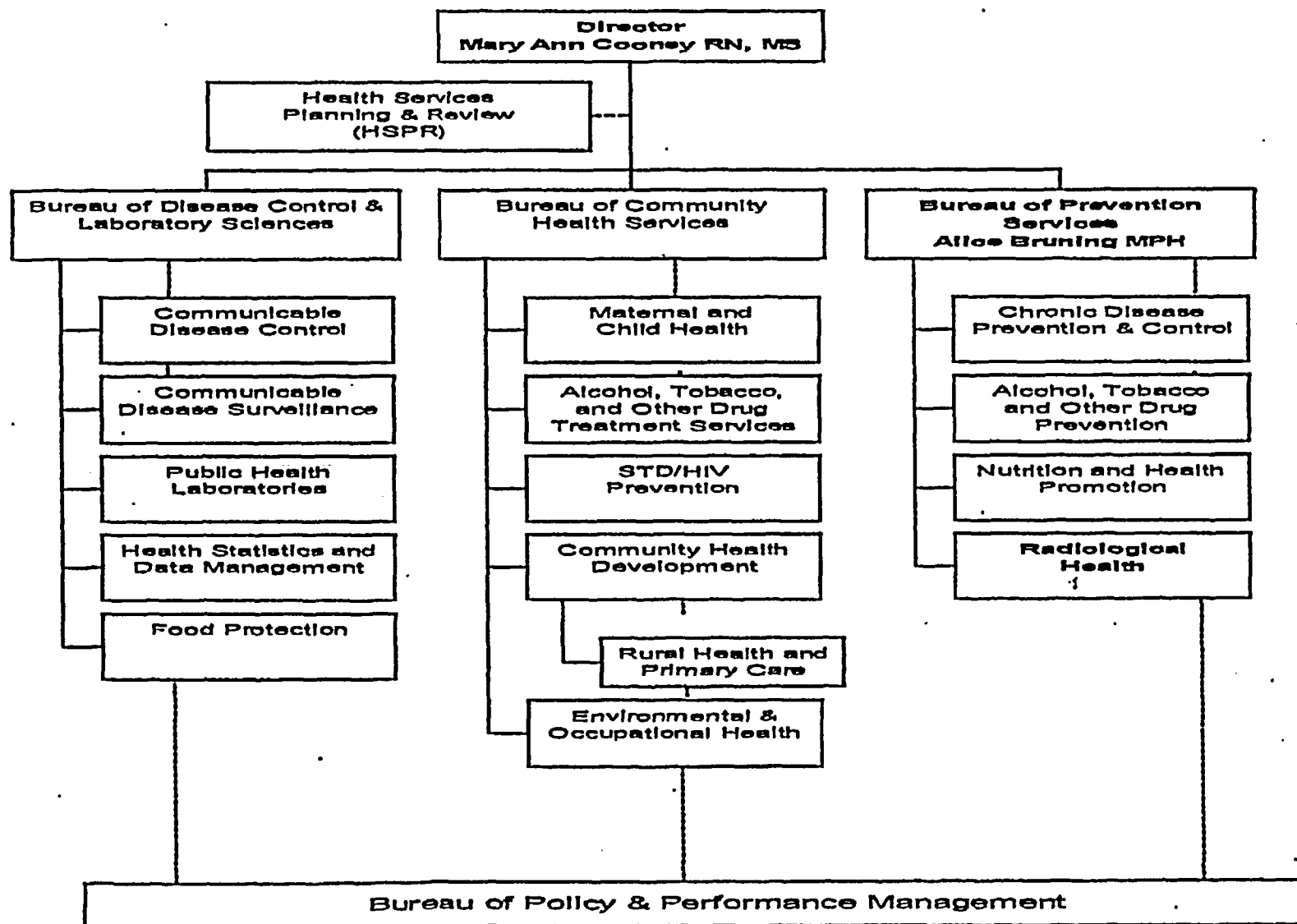
- Division of "Family Support Services" (DCVF, DJJS)
- Division of Financial Assistance (DFA)
- Division of Public Health Services (OCPH, DADAPR)
- Division of Community Based Care Services (DDS, DBH, DEAS)
- Division of Medical Services (OHPM)
- Division of Child Support Services (DCSS)

Office of Medicaid Business & Policy (OMBP)

- Bureau of Medicaid Policy (MP)
- Bureau of Health Care Data and Reporting (I)
- Bureau of Health Care Research (HCR)

Organizational Chart A

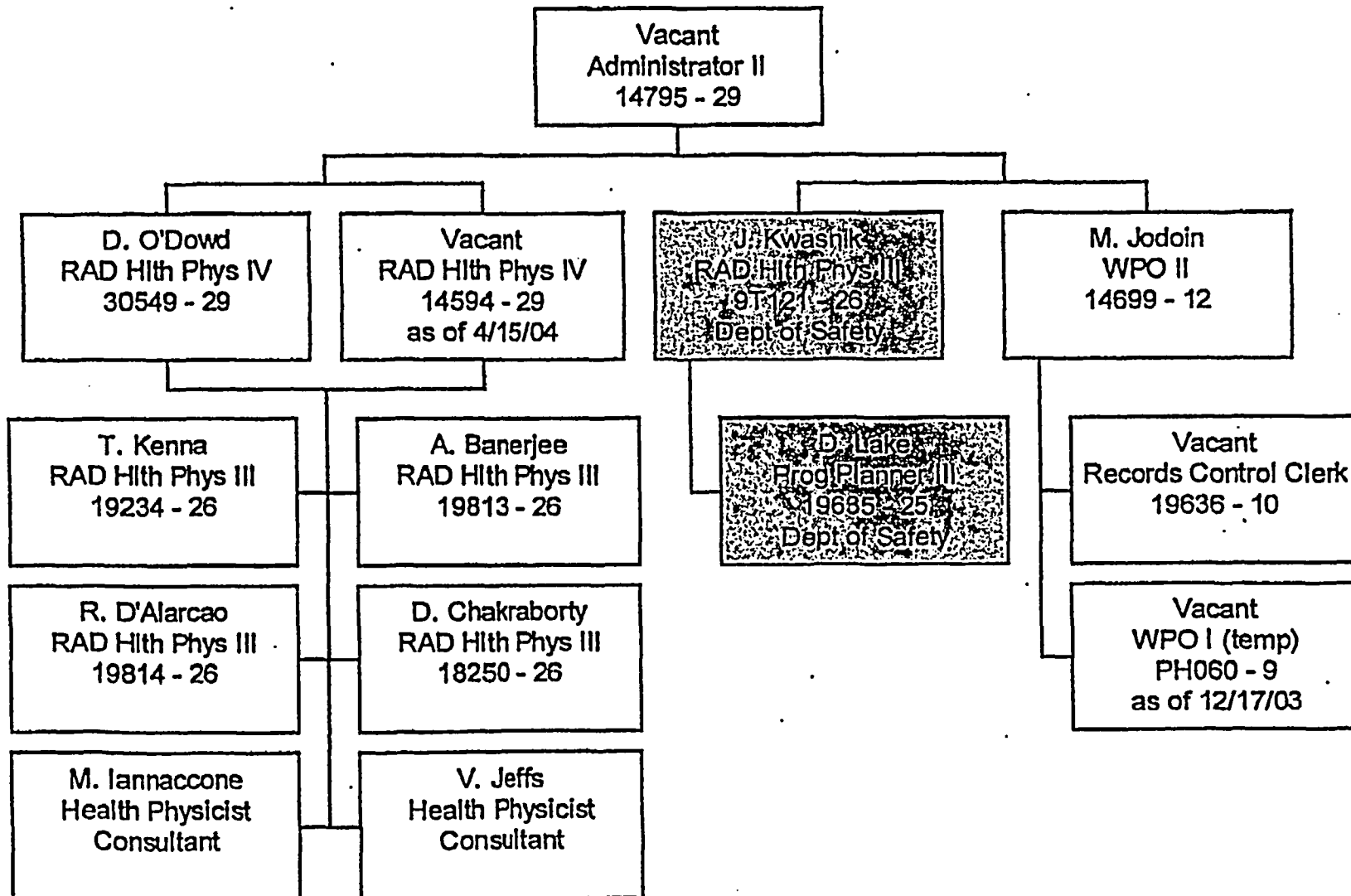
Division of Public Health Services



6/17/2004

Organizational Chart B

**Division of Public Health Services
Radiological Health Section
Current - 06-15-04**



*Positions in gray currently with Department of Safety. In process to be transferred back July 1, 2004, pending Fiscal Committee and Governor and Council Action

Organizational Chart C

APPENDIX C

INSPECTION CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM.

File No.: 1
Licensee: Chart, Inc. License No.: 299R
Location: - Plaistow, NH Inspection Type: Routine, unannounced
License Type: Industrial radiography - fixed cell Priority: 2
Inspection Date: 9/23/02 Inspector: MI

Comment:

Inspection report issued to the licensee 32 days after completion of inspection.

File No.: 2
Licensee: Catholic Medical Center License No.: 190R
Location: Manchester, NH Inspection Type: Routine, unannounced
License Type: Medical Institution - Written Directive Required/Brachytherapy Priority: 2
Inspection Date: 11/15/02 Inspector: MI

File No.: 3
Licensee: Trustees of Dartmouth College License No.: 382R
Location: Lebanon, NH Inspection Type: Routine, unannounced
License Type: Irradiator, Greater than 10,000 Curies Priority: 2
Inspection Date: 4/16/02 Inspector: TK

Comments:

- a) Names with social security numbers attached to inspection record.
- b) No acknowledgment letter issued in response to licensee's corrective actions.

File No.: 4
Licensee: Elliot Hospital License No.: 182R
Location: Manchester, NH Inspection Type: Routine, unannounced
License Type: Medical Institution - Written Directive Required/Brachytherapy Priority: 3
Inspection Date: 12/10/02 Inspector: MI

Comments:

- a) Inspection report issued to licensee 145 days after completion of inspection.
- b) No correspondence issued after enforcement conference. Section did re-inspect licensee six months later and determined that the licensee's performance had improved significantly.

File No.: 5
Licensee: St. Joseph Hospital License No.: 259R
Location: Nashua, NH Inspection Type: Routine, unannounced
License Type: Medical Institution - Written Directive Required Priority: 3
Inspection Date: 9/30/03 Inspectors: AB, TK

File No.: 6

Licensee: Monadnock Community Hospital

License No.: 368R

Location: Petersborough, NH

Inspection Type: Routine, unannounced

License Type: Medical Institution - Written Directive Required

Priority: 3

Inspection Date: 6/30/03

Inspectors: TK, AB

File No.: 7

Licensee: University of New Hampshire

License No.: 190R

Location: Durham, NH

Inspection Type: Routine, unannounced

License Type: Academic Type A Broad Scope

Priority: 3

Inspection Date: 12/19/01

Inspectors: TK, SF

Comment:

Inspection report issued to licensee 105 days after completion of inspection.

File No.: 8

Licensee: Cirtronics Corporation

License No.: 443R

Location: Milford, NH

Inspection Type: Initial, announced

License Type: Manufacturing

Priority: 5

Inspection Date: 2/28/03

Inspectors: SF, AB

Comment:

One violation cited in Notice of Violation was incorrectly split into three separate citations.

File No.: 9

Licensee: ABC Testing Co.

License No.: MA-19-7781

Location: Claremont, NH

Inspection Type: Reciprocity, unannounced

License Type: Industrial Radiography

Priority: NA

Inspection Date: 4/12/04

Inspectors: AB, RD

File No.: 10

Licensee: Florida Power & Light Co.

License No.: FL-1091-5

Location: Seabrook, NH

Inspection Type: Reciprocity, unannounced

License Type: Industrial Radiography

Priority: NA

Inspection Date: 9/4/03

Inspectors: MI, AB

File No.: 11

Licensee: Mary Hitchcock Memorial Hospital

License No.: 130R

Location: Lebanon, NH

Inspection Type: Special, unannounced

License Type: Medical Institution - Written Directive Required/HDR

Priority: 2

Inspection Date: 4/21/03

Inspectors: MI, TK

File No.: 12

Licensee: Quality Assurance Laboratories

Location: Nashua, NH

License Type: Industrial Radiography

Inspection Date: 11/25/03

License No.: 439R

Inspection Type: Initial, announced

Priority: 1

Inspector: AB

Comment:

Inspection report not issued for seven months after completion of inspection. Concerns identified during the inspection are being addressed through licensing.

INSPECTOR ACCOMPANIMENT

The following inspector accompaniment was made as part of the on-site IMPEP review:

Accompaniment No.: 1

Licensee: Parkland Medical Center

Location: Derry, NH

License Type: Medical Institution - Written Directive Required

Inspection Date: 6/9/04

License No.: 308R

Inspection Type: Routine, unannounced

Inspection Priority: 3

Inspector: AB

APPENDIX D

LICENSE CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM.

File No.: 1	
Licensee: Harding Metals, Inc.	License No.: 431R
Location: Northwood, NH	Amendment No.: 5
License Type: Fluorescence X-ray Analyzer	Type of Action: Simple Renewal/Amendment
Date Issued: 5/19/04	License Reviewer: AB

File No.: 2	
Licensee: Miller Engineering & Testing, Inc.	License No.: 278R
Location: Manchester, NH	Amendment No.: 26
License Type: Portable Gauge	Type of Action: Simple Renewal
Date Issued: 12/2/03	License Reviewer: DO

File No.: 3	
Licensee: University of New Hampshire	License No.: 190R
Location: Durham, NH	Amendment No.: 41
License Type: Broad Scope (Academic)	Type of Action: Amendment
Date Issued: 3/15/04	License Reviewer: VJ

File No.: 4	
Licensee: Atlantic Cardiology Associates, P.A.	License No.: 437R
Location: Portsmouth, NH	Amendment No.: 0
License Type: Medical Private Practice (Diagnostic)	Type of Action: Simple Renewal
Date Issued: 3/10/03	License Reviewer: DO

File No.: 5	
Licensee: Chart, Inc.	License No.: 299R
Location: Plaistow, NH	Amendment No.: 22
License Type: Industrial Radiography (fixed facility)	Type of Action: Simple Renewal/Amendment
Date Issued: 12/31/01	License Reviewer: TK

File No.: 6	
Licensee: Kollsman, Inc.	License No.: 427R
Location: Merrimack, NH	Amendment No.: 19
License Type: Research & Development	Type of Action: Amendment
Date Issued: 8/29/03	License Reviewer: DO

File No.: 7	
Licensee: Nylon Corporation of America, Inc.	License No.: 142R
Location: Manchester, NH	Amendment No.: 26
License Type: Fixed gauge	Type of Action: Amendment
Date Issued: 7/8/03	License Reviewer: DO

File No.: 8

Licensee: American Health Centers, Inc.

Location: Bedford, NH

License Type: Mobile Nuclear Medicine

Date Issued: 8/29/03

License No.: 450R

Amendment No.: 0

Type of Action: New

License Reviewer: VJ

File No.: 9

Licensee: Mary Hitchcock Memorial Hospital

Location: Salem, NH

License Type: Medical therapy Brachytherapy

Date Issued: 5/7/04

License No.: 130R

Amendment No.: 86

Type of Action: Amendment

License Reviewer: TK

File No.: 10

Licensee: Trustees of Dartmouth College

Location: Lebanon, NH

License Type: Irradiator > 10,000 Ci

Date Issued: 7/8/03

License No.: 382R

Amendment No.: 16

Type of Action: Amendment

License Reviewer: TK

Comment:

This license does not appear to be fully compliant with 10 CFR 36 by license condition, procedural commitments, or regulation. Examples of the discrepancies include: No visual alarm prior to source movement; the key is not attached to a portable radiation survey meter by a chain or cable; the operator is not required to activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

File No.: 11

Licensee: Hampshire Chemical Corporation

Location: Nashua, NH

License Type: Fixed gauge

Date Issued: 6/16/03

License No.: 373R

Amendment No.: 13

Type of Action: Termination

License Reviewer: AB/SF

File No.: 12

Licensee: Trustees of Dartmouth College

Location: Hanover, NH

License Type: Broad Scope (Academic)

Date Issued: 3/15/04

License No.: 276R

Amendment No.: 26

Type of Action: Amendment

License Reviewer: VJ

Comment:

As identified in the 2001 IMPEP review, licensee needed to submit documentation of financial assurance or reduce the possession limits below those needed for financial assurance. No documentation in the file to suggest an amendment has been performed to reduce the possession limits of radioactive material or demonstrate financial assurance has been provided for this licensee.

APPENDIX E

INCIDENT CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT IS INCLUDED FOR COMPLETENESS ONLY.

File No.: 1

Licensee: St. Joseph Hospital

Site of Incident: Nashua, NH

Date of Incident: 6/3/03

Investigation Dates: 6/17 - 7/2/03

Licensee No.: 259R

NMED Number: NA

Type of Incident: Medical Event

Type of Investigation: Phone, Next Inspection

File No.: 2

Licensee: Elliot Hospital

Site of Incident: Manchester, NH

Date of Incident: 6/27/01

Investigation Dates: 7/2 - 9/4/01

Licensee No.: 182R

NMED Number: NA

Type of Incident: Medical Event

Type of Investigation: Phone, Next Inspection

File No.: 3

Licensee: Portsmouth High School

Site of Incident: Portsmouth, NH

Date of Incident: 10/2/03

Investigation Date: 10/3/03

Licensee No.: NA

NMED Number: NA

Type of Incident: Abandoned Radioactive Material

Type of Investigation: Site

File No.: 4

Licensee: St. Thomas Aquinas High School

Site of Incident: Portsmouth, NH

Date of Incident: 1/20/04

Investigation Date: 1/20/04

Licensee No.: NA

NMED Number: NA

Type of Incident: Abandoned Radioactive Material

Type of Investigation: Site

File No.: 5

Licensee: Amersham Health

Site of Incident: Temple, NH

Date of Incident: 12/15/03

Investigation Date: 12/15/03

Licensee No.: MA-58-0001

NMED Number: 040124

Type of Incident: Transportation

Type of Investigation: Phone

File No.: 6

Licensee: Cardinal Health

Site of Incident: Newport, NH

Date of Incident: 8/21/03

Investigation Date: 8/21-29/03

Licensee No.: MA-42-0146

NMED Number: 030915

Type of Incident: Transportation

Type of Investigation: Site

File No.: 7

Licensee: Longview Inspection

Site of Incident: Berlin, NH

Date of Incident: 10/1/03

Investigation Date: 11/4-6/03

Licensee No.: ME-17501

NMED Number: 040147

Type of Incident: Overexposure

Type of Investigation: Phone

File No.: 8
Licensee: Advanced Recycling
Site of Incident: Concord, NH
Date of Incident: 1/15/02
Investigation Date: 1/15-16/02

Licensee No.: NA
NMED Number: NA
Type of Incident: Abandoned Radioactive Material
Type of Investigation: Site

File No.: 9
Licensee: Anheuser-Busch
Site of Incident: Merrimack, NH
Date of Incident: 6/30/01 - 11/1/01
Investigation Date: 11/2-21/01

Licensee No.: General Licensee
NMED Number: 020149
Type of Incident: Lost Radioactive Material
Type of Investigation: Site

APPENDIX F

SEALED SOURCE AND DEVICE CASEWORK REVIEW

File No.: 1

Registry No.: NH-1184-D-101-S

Manufacturer: BAE Systems

Date Issued: 5/8/03

SS&D Type: (O) Static Eliminator
Model No.: Laser Systems Series BAE

Comments:

- a) Specific engineering drawings were not incorporated in the file due to their military sensitivity. These drawings were evaluated by the Section during a meeting with the manufacturer.
- b) Quality assurance procedures provided by the manufacturer were general in nature due to their military sensitivity. The manufacturer committed to making the detailed quality assurance procedures available for inspection at their facility.

ATTACHMENT

August 11, 2004 Letter from Mary Ann Cooney
New Hampshire's Response to the Draft IMPEP Report

ML042390053



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



John A. Stephen
Commissioner

29 HAZEN DRIVE, CONCORD, NH 03301-6504
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964

Mary Ann Cooney
Director

August 11, 2004

Ms. Kathleen Schneider
Sr. Project Officer
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Ms. Schneider:

On behalf of The NH Department of Health and Human Services' Division of Public Health Services, Radiological Health Program, I reviewed your recent letter and the Integrated Materials Performance Evaluation Program (IMPEP) report. In advance of my response to the report findings, I would like to thank you and your team for their review of our Radiation Control program and formally recognize your process as one that was both informative and productive. New Hampshire (NH) is privileged to be an Agreement State with the Nuclear Regulatory Commission (NRC).

As noted, the findings represent the results of your review conducted during the period of June 21 through June, 25 2004 and covered the period of February 6, 2003 to June 25, 2004 for the indicators Technical Staffing and Training, Status of Materials Inspection Program, and Compatibility Requirements; and the period June 30, 2001 to June 25, 2004 for the other performance indicators. As discussed in our exit interview on June 25, 2004, we acknowledge the preliminary finding of Satisfactory, needs improvement for the indicator "Technical Staffing and Training." Further, we acknowledge the preliminary finding of Unsatisfactory for the indicator "Compatibility Requirements." Both these findings resulted in the team's suggested recommendation to place the Program on heightened oversight within "Adequate, But Needs Improvement" and "Not Compatible". While we have, in the past, had difficulties with staff vacancies and competency levels, we believe we have made great strides in meeting many of our own program's performance and management objectives and are happy to see this was acknowledged in the report summary. NH continues to be conscientious in its commitment to continuously improve and hopes that, in the near future, the heightened oversight finding will be reviewed and lifted based on our demonstrated improvements.

A few additional comments below are in direct response to your review and will serve as a foundation for additional discussion at our meeting with the Management Review Board, soon to be scheduled.

- Draft Report Page 4 The statement is made in the second to the last paragraph on Page 4 that "...there are still several categories of license inspections that additional field work is required for full qualifications as an inspector", relative to Asish Banerjee's

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qualifications. Mr. Banerjee, however, is qualified to perform most of the required inspections, and currently undergoing additional training.

Response: NH requests that the statement be re-worded as follows: "The other experienced health physicist within the program is qualified to conduct inspections of most categories of licensees in the state and conducts the majority of the inspections; however, there are still categories of license inspections that additional field work is required for full qualifications as an inspector, and he is currently undergoing training in these areas."

- **Draft Report Page 4** The statement is made in the last sentence of the second to the last paragraph on Page 4 that "The individual [A. Banerjee] has not yet received any qualification as a license reviewer" falls short of clarifying that he is undergoing training to achieve such qualifications.

Response: NH request that the statement be re-stated as follows: "The individual has not yet received any qualification as a license reviewer; however, he is currently undergoing training towards achieving licensing qualifications."

- **Draft Report Page 5** The statement is made at the top of Page 5 that "Training support from surrounding Agreement States or NRC Region I could supplement the available casework to accelerate the qualification process for all staff conducting materials activities". As stated, this was discussed during the review team's discussions with the supervisor.

Response: NH has already made contact with the program managers in Massachusetts and Maine to request assistance in allowing accompaniments of their respective state inspectors by New Hampshire "materials inspectors-in-training" for the purposes of providing these additional training opportunities. Maine has responded positively to this request (August 3, 2004), and the state is still awaiting a response from the Massachusetts program manager on this request at this time.

- **Draft Report Page 8** The statement is made in paragraph 3 of Page 8 that the review team recommends "that the Section immediately take action to bring the irradiator licensee into full compliance with 10 CFR Part 36 by adopting regulations compatible with 10 CFR Part 36, by adopting license conditions compatible with 10 CFR Part 36; by license condition, procedural commitments, regulation, or other legally binding requirements."

Response: On June 25, 2004, the final day of the IMPEP onsite review, the licensee in question was contacted and notified that the state would be taking prompt action to impose 10 CFR Part 36 requirements onto the license, and that the licensee needed to be aware and to prepare for any possible changes that may be required. On July 30, 2004, an amendment to Dartmouth College Radioactive Material License No. 382R, (authorizing the possession and use of the irradiator), was issued that imposed by license condition all of the applicable requirements of 10 CFR Part 36. In addition, on August 2, 2004, the final draft of the amendment to the New Hampshire Rules for the Control of Radiation was transmitted to the DHHS Rules Coordinator with a request that these be accepted into the rulemaking process.

- **Draft Report Page 8** The statement is made in paragraph 4 of Page 8 that "[f]inancial assurance has been received for one of the licensees, but there is no documentation in the file to suggest an amendment has been performed to reduce the possession limits of radioactive material or demonstrate financial assurance for the second licensee. During the review, the Supervisor discussed this issue with the licensee who is presently undergoing license renewal."

Response: On July 2, 2004, the NH Radiological Health Section received the financial assurance statement from the licensee, Trustees of Dartmouth College, which was subsequently incorporated into the license.

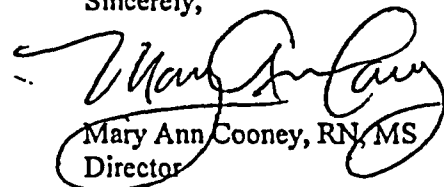
- **Draft Report Page 12** Re: Regulations requiring adoption.

Response: The state has substantially increased its efforts in the area of radiation rule adoption. While 10 CFR Part 36 requirements have been imposed on the Dartmouth College license via license condition, efforts are currently underway to adopt 10 CFR Part 36, as well as 10 CFR Part 39, by reference. In addition, other required updates are very actively in process with the department's rules coordinator.

In summary, the state of New Hampshire continues to diligently make progress in addressing the issues raised that have preliminarily placed us on heightened oversight. We believe that our relationship with the NRC has been and will continue to be positive and productive. I am looking forward to discussing these draft findings in person with you and others as part of the Management Review Board in September 2004. Additionally, I have arranged for Dennis O'Dowd, acting supervisor, and Alice Bruning, Administrator, Bureau of Prevention Services, to be available for a conference call when appropriate to the discussion. Please work with Emy Conway, my assistant, to confirm travel and meeting plans.

Again, I look forward to the Management Review Board meeting later this year. I can be reached at 603-271-4612 should you require additional information prior to that.

Sincerely,



Mary Ann Cooney, RN, MS
Director

**Agenda for Management Review Board Meeting
September 28, 2004, 1:00 p.m. - 3:00 p.m., O-6-B4**

1. MRB Chair convenes meeting. Introduction of MRB members, review team members, New Hampshire representatives, and other representatives participating through telephone bridge or video conferencing.
2. Consideration of the New Hampshire IMPEP Report.
 - A. Presentation of Findings Regarding New Hampshire Program and Discussion.
 - Technical Staffing and Training
 - Status of Materials Inspection Program
 - Technical Quality of Inspections
 - Technical Quality of Licensing Actions
 - Technical Quality of Incident and Allegation Activities
 - Compatibility Requirements
 - Sealed Source and Device Evaluation Program
 - B. MRB Consultation/Comments on Issuance of Report.
 - Adequacy and Compatibility Rating
 - Recommendation for Next IMPEP Review
 - C. Comments
4. Status of IMPEP Reviews and Heightened Oversight/Monitoring Activities
5. Establishment of Precedents/Lessons Learned
6. Adjournment

Invitees: Martin Virgilio, EDO
Paul Lohaus, STP
Jack Strosnider, NMSS
Karen Cyr, OGC
Mary Ann Cooney, NH
Osiris Siurano, STP
Alice Bruning, NH

Duncan White, RI
Kathleen Schneider, STP
James Harris, KS
Roland Fletcher, MD
Josephine Piccone, STP
Aaron McCraw, STP
Dennis O'Dowd, NH