

August 31, 2006

Mr. Richard A. Ratliff, PE, LMP
Radiation Program Officer
Division of Regulatory Services
Department of State Health Services
1100 West 49th Street, MC 2827
Austin, TX 78756-3189

Dear Mr. Ratliff:

As you are aware, the U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) for the evaluation of Agreement State programs. Per our discussion, I will be the team leader for the follow-up IMPEP review of the Texas Agreement State Program scheduled for November 13-17, 2006. The team will include Linda McLean, NRC Region IV State Agreements Officer; Osiris Siurano, Health Physicist, NRC Office of State and Tribal Programs (STP); Tomas Herrera, Mechanical Engineer, NRC Office of Nuclear Materials Safety and Safeguards; James Harris, Radiation Control Inspector, Kansas Bureau of Air and Radiation; and myself.

On December 14, 2005, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Texas Agreement State Program. During the meeting, the MRB directed that a follow-up review be conducted in one year that focused on the State's performance for the following indicators: Technical Staffing and Training, Status of the Materials Inspection Program, Technical Quality of Inspections and Technical Quality of Incident and Allegation Activities. In addition to inspector accompaniments and review of select casework completed since the 2005 IMPEP review, the team will review your actions in response to the recommendations made for the four indicators mentioned above.

Based on the information submitted in the Program Improvement Plan and the bimonthly heightened oversight teleconferences, I have enclosed an abridged version of the IMPEP Questionnaire containing questions 1-16, 22-26, and 29. I ask that you send your response by Internet (kxs@nrc.gov) to me by October 27, 2006. Also included with the Questionnaire is the document "Materials Requested to Be Available for the Onsite Portion of an IMPEP Review." We encourage States to have the listed items prepared prior to the IMPEP team's arrival to facilitate the review.

The team will also discuss the actions that the Texas Department of State Health Services has taken for the remaining recommendations from 2005 IMPEP review. The team will use the guidance in STP Procedure SA-116, "Periodic Meetings with Agreement States Between IMPEP Reviews," for conducting these discussions. This procedure can be found on the STP web site.

R. A. Ratliff

- 2-

I request that you set up an appointment with the appropriate State Senior Management Official to discuss the results of the follow-up IMPEP review of the Texas Agreement State Program on November 17, 2006.

If you have questions, please call me at 301-415-2320.

Sincerely,

/RA/

Kathleen N. Schneider
Senior Project Manager
Office of State and Tribal Programs

Enclosure:
As Stated

cc: R. B. Bays, Assistant Commissioner
Division for Regulatory Services, TDSHS

D. Eden, Deputy Director
Office of Permitting, Remediation & Registration, TCEQ

Susan M. Jablonski, Technical Advisor
Office of Permitting, Remediation and Registration, TCEQ

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

QUESTIONNAIRE

Texas Department of State Health Services
Reporting Period: September 2005 to November 2006

Note: If there has been no change in the response to a specific question since the last IMPEP questionnaire, the State or Region may copy the previous answer if appropriate.

A. COMMON PERFORMANCE INDICATORS

I. Technical Staffing and Training

1. Please provide the following organization charts, including names and positions:
 - (a) A chart showing positions from Governor down to Radiation Control Program Director;
 - (b) A chart showing positions of current radiation control program including management; and
 - (c) Equivalent charts for sealed source and device, low level radioactive waste and uranium recovery programs, if applicable
2. Please provide a staffing plan, or complete a listing using the suggested format below, of the professional (technical) person-years of effort applied to the agreement or radioactive material program by individual. Include the name, position, and, for Agreement States, the fraction of time spent in the following areas: administration, materials licensing & compliance, emergency response, LLW, U-mills, other. If these regulatory responsibilities are divided between offices, the table should be consolidated to include all personnel contributing to the radioactive materials program. Include all vacancies and identify all senior personnel assigned to monitor work of junior personnel. If consultants were used to carry out the program's radioactive materials responsibilities, include their efforts. The table heading should be:

<u>Name</u>	<u>Position</u>	<u>Area of Effort</u>	<u>FTE%</u>
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3. Please provide a listing of all new professional personnel hired since the last review, indicate the degree(s) they received, if applicable, and additional training and years of experience in health physics, or other disciplines, if appropriate.

¹ Estimated burden per response to comply with this voluntary collection request: 53 hours. Forward comments regarding burden estimate to the Records Management Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0183), Office of Management and Budget, Washington, DC 20503. If an information collection does not display a currently valid OMB control number, NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

4. Please list all professional staff who have not yet met the qualification requirements of license reviewer/materials inspection staff (for NRC, Inspection Manual Chapter (IMC) 1246; for Agreement States, please enclose a copy of your qualification and training procedure. If you do not have a written procedure please describe your qualifications requirements for materials license reviewers and inspectors). For each, list the courses or equivalent training/experience they need to attend and a tentative schedule for completion of these requirements.
5. Please identify the technical staff who left the Agreement State/Regional DNMS program during this period.
6. List the vacant positions in each program, the length of time each position has been vacant, and a brief summary of efforts to fill the vacancy.
7. Does the Agreement State program have an oversight board or committee which provides direction to the program and is composed of licensees and other members of the public? If so, please describe the procedures used to avoid a conflict of interest.

II. Status of Materials Inspection Program

8. Please identify individual licensees or categories of licensees the State/Region is inspecting more or less frequently than called for in IMC 2800 and state the reason for the difference.
9. Please provide for the review period, the number of Priority 1, 2, and 3 inspections as identified in IMC 2800 that were completed and the number of initial inspections that were completed.
10. Please submit a table, or a computer printout, that identifies inspections of Priority 1, 2, and 3 licensees, and initial inspections that are presently overdue or which were conducted at intervals that exceed the IMC 2800 frequencies over the course of the entire review period. (See STP Procedure SA-101, *Reviewing the Common Performance Indicator, Status of Materials Inspection Program*, for detailed guidance in preparing this information).

At a minimum, the list should include the following information for each inspection that is overdue or conducted overdue during the review period:

- (1) Licensee Name
- (2) License Number
- (3) Priority
- (4) Last inspection date or license issued date if initial inspection
- (5) Date Due
- (6) Date Performed
- (7) Amount of Time Overdue
- (8) Date inspection findings issued

11. If you have any overdue inspections, do you have an action plan for completing them? If so, please describe the plan or provide a written copy with your response to this questionnaire.
12. Please provide the number of reciprocity licensees that were candidates for inspection per year as described in NRC IMC 1220 and the number of candidate reciprocity inspections that were completed each year during the review period.

III. Technical Quality of Inspections

13. What, if any, changes were made to your written inspection procedures during the reporting period?
14. Prepare a table showing the number and types of supervisory accompaniments made during the review period. Include:

<u>Inspector</u>	<u>Supervisor</u>	<u>License Category</u>	<u>Date</u>
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15. Describe internal procedures for conducting supervisory accompaniments of inspectors in the field.
16. Describe or provide an update on your instrumentation, methods of calibration and laboratory capabilities. Are all instruments properly calibrated at the present time? Were there sufficient calibrated instruments available through the review period?

V. Responses to Incidents and Allegations

22. For Agreement States, please provide a list of any reportable incidents not previously submitted to NRC (See STP Procedure SA-300, Reporting Material Events for additional guidance, OMB clearance number 3150-0178). The list should be in the following format:

<u>Licensee Name</u>	<u>License #</u>	<u>Date of Incident/Report</u>	<u>Type of Incident</u>
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23. During this review period, did any incidents occur that involved equipment or source failure or approved operating procedures that were deficient? If so, how and when were other State/NRC licensees who might be affected notified? For States, was timely notification made to NRC? For Regions, was an appropriate and timely PN generated? For Agreement States, was information on the incident provided to the agency responsible for evaluation of the device for an assessment of possible generic design deficiency? Please provide details for each case.

24. Identify any changes to your procedures for handling allegations that occurred during the period of this review.

VI. General

25. Please prepare a summary of the status of the State's or Region's actions taken in response to the comments and recommendations following the last review. Provide the results of any program audits (including self audits) completed during the review period.
26. Provide a brief description of your program's strengths and weaknesses. These strengths and weaknesses should be supported by examples of successes, new initiatives, problems or difficulties which occurred during this review period.

B. NON-COMMON PERFORMANCE INDICATORS

I. Legislation and Program Elements Required for Compatibility

29. Please review and verify that the information in the enclosed State Regulation Status sheet is correct. For those regulations that have not been adopted by the State, explain why they were not adopted, and discuss actions being taken to adopt them.

If legally binding requirements were used in lieu of regulations, please describe their use.

MATERIALS REQUESTED TO BE AVAILABLE FOR THE ONSITE PORTION OF AN IMPEP REVIEW

Please have the following information available for use by the IMPEP review team when they arrive at your office:

- 9 List of open license cases, with date of original request, and dates of follow up actions
- 9 List of licenses terminated during review period.
- 9 Copy of current log or other document used to track licensing actions
- 9 Copy of current log or other document used to track inspections
- 9 List of Inspection frequency by license type
- 9 List of all allegations occurring during the review period. Show whether the allegation is open or closed and whether it was referred by NRC

ALSO, PLEASE HAVE THE FOLLOWING DOCUMENTS AVAILABLE:

- | | |
|---|--|
| 9 All State regulations | 9 Records of results of supervisory |
| 9 Statutes affecting the regulatory authority of the state program | accompaniments of inspectors |
| 9 Standard license conditions | 9 Emergency plan and communications list |
| 9 Technical procedures for licensing, model licenses, review guides | 9 Procedures for investigating allegations |
| 9 SS&D review procedures | 9 Procedures for investigating incidents |
| 9 Instrument calibration records | 9 Enforcement procedures, including procedures for escalated enforcement, severity levels, civil penalties (as applicable) |
| 9 Inspection procedures and guides | |
| 9 Inspection report forms | 9 Job descriptions |

STATE REGULATION STATUS

State: Texas

**(# amendments reviewed identified by a i
at the beginning of the equivalent NRC requirement.)**

Tracking Ticket Number:

Date:

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML051520266	N 10/31/05 ML053050013	Superceded by 1997-5
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F	N 11/6/97	9/1/93
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML052060129	N 9/29/05 ML052720491	10/00
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/7/95)	1992-1			Superceded by 2002-2
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F ML052060129	Y 9/29/05 ML052720491	09/04
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML051520266	N 8/12/05 ML052280032	10/01/2000
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Part 61 not applicable to TX-DOH
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	P	N 11/21/97	
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 9/29/05	09/04

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
			ML052060129		
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1	F	N 3/17/99	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F ML051520266	N 10/31/05 ML053050013	04/2002
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F ML051520266	Y 10/31/05 ML053050013	04/2002
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML051520266	N 10/31/05 ML053050013	04/11/1999
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 3/17/99	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML052060129	N 9/29/05 ML052720491	09/04
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML051520266	N 10/31/05 ML053050013	10/1/2000
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F ML052060129	Y 9/29/05 ML052720491	3/1/98
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	P (Part 30)	N 11/8/96	Part 61 not applicable to TX-DOH
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 7/7/00	10/1/00
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 7/7/00	10/1/00
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F	N 7/7/00	3/30/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 7/7/00	10/1/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML052060129	N 9/29/05 ML052720491	9/1/04
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1			
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F ML051520266	Y 10/31/05 ML053050013	04/11/1999
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	F	N 7/7/00	10/1/00
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 7/7/00	10/1/00
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML051520266	Y 8/12/05 ML052280032	09/01/04

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3			
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML051520266	Y 8/12/05 ML052280032	04/29/03
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML051520266	N 8/12/05 ML052280032	04/29/03
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ⁷ ML051520266		09/01/04
Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2			

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052240226	N 12/12/05 ML053420404	12/2/05
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means “Yes,” there are comments in the review letter that the State needs to address.
N means “No,” there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number
6. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
7. A re-review was completed on this item due to the change in compatibility category of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.