

September 12, 2007

MEMORANDUM TO: Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Karen D. Cyr, General Counsel

Mark A. Satorius
Deputy Regional Administrator, Region III

FROM: Kim Lukes, General Scientist /RA/
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: SEPTEMBER 20, 2007, SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of periodic meetings with three Agreement States has been scheduled for **Thursday, September 20, 2007, from 2:00 p.m. to 4:00 p.m. EDT, in One White Flint North, Room O-3-B2**. The periodic meetings with New Mexico, Nevada, and Kentucky will be discussed. The meeting summary for each of these States is enclosed (Enclosures 1, 2 and 3).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 4).

If you have any questions or need additional information, please feel free to contact me at (301) 415-6701.

Enclosures:
As stated

cc: Roland Fletcher, MD
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

September 12, 2007

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

July 26, 2007

Mr. Walter Medina, Program Manager
Radiation Control Bureau
Environmental Health Division
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502-6110

Dear Mr. Medina:

A periodic meeting with New Mexico was held on June 28, 2007. The purpose of this meeting was to review and discuss the status of New Mexico's Agreement State Program. The NRC was represented by myself and Leonard Wert from NRC's Region IV office.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8116 or e-mail MLM1@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Linda McLean
Regional State Agreements Officer
Region IV

ENCLOSURE:

As stated

cc w/enclosure:
Janet Schlueter, Director
Office of Federal and State Materials and
Environmental Management Programs (FSME)

John Parker, Chief
New Mexico Radiation Control Bureau
Ana Marie Ortiz, Director
Environmental Health Division

ENCLOSURE 1

PERIODIC MEETING SUMMARY FOR NEW MEXICO

DATE OF MEETING: June 28, 2007

ATTENDEES:

State	NRC
John Parker, Bureau Chief Walter Medina, Program Manager Ana Marie Ortiz, Director Daniela Bowman, Environmental Scientist Michael Ortiz, Environmental Scientist Santiago Rodriguez, Environmental Scientist Margaret Roybal, Environmental Scientist Carl Sullivan, Environmental Scientist Edward Vigil, Environmental Scientist	Linda McLean, Regional State Agreements Officer Leonard Wert, Division Director

DISCUSSION:

The following is a summary of the meeting held in Santa Fe, New Mexico, on June 28, 2007, between representatives of the NRC and the State of New Mexico. During the meeting, the topics suggested in the letter dated May 3, 2007, from Mrs. McLean to Mr. Medina were discussed. The discussion pertaining to each topic is summarized below.

The New Mexico Agreement State Program is administered by the Radiation Control Bureau in the Environmental Health Division of the New Mexico Environment Department. The Program regulates approximately 194 specific licenses authorizing Agreement materials.

The last Integrated Materials Performance Evaluation Program (IMPEP) Review was conducted during the week of June 6-10, 2005. The review team found New Mexico's performance to be satisfactory for five of the performance indicators reviewed, and one to be satisfactory but needs improvement (Technical Quality of Licensing Actions). Therefore, the review team recommended and the MRB concurred, that the next full review will be in approximately four years. Two recommendations from the IMPEP Review are described below.

Status of State's actions to address open previous IMPEP review findings and/or open recommendations.

1. The review team recommended that the Program retrain its staff with regard to following its established procedure for termination of radioactive material licenses and follow-up actions by the inspectors regarding closeout surveys or additional documentation to support the termination request.

Current Status

The Program is performing decommissioning surveys and requiring Certificates of Disposition of the material before terminating licenses. In addition, state of the art instrumentation has been purchased to conduct the surveys. It is recommended that this item be closed at the next IMPEP Review.

2. The review team recommended that the Program develop and implement a process that ensures an adequate evaluation of license renewal information.

Current Status

The Program requires licensees to submit completed applications for all renewals. The renewal frequency is every five years. It is recommended that this item be closed at the next IMPEP Review.

Strengths and/or weaknesses of the State program as identified by the State or NRC including identification of actions that could diminish weaknesses.

Strengths: The Program has an experienced and motivated staff. The State's fee schedule has provided the Program with greater opportunities for staff training and for public outreach. The fees have provided adequate money for staff training, better radiation detection equipment, and other equipment needed for the Program.

Weaknesses: The Program usually has one vacant position due to staff turnover. Currently, there is one vacancy, and the position has been posted. Another weakness is that the Program's procedures need to be updated.

Feedback on NRC's program as identified by the State and including identification of any action that should be considered by NRC.

- The Program said that the fingerprinting rule should be risked informed, have clear procedures, and appropriate adjudication criteria.
- NRC needs to increase the number of spaces in the increased controls training course for State staff.
- The Program asked that the training course list be issued earlier in the year for budget planning.

Status of State Program including:

Staffing and training; number of staff in the program and status of their training and qualifications; program vacancies; staff turnover; adequacy of FTEs for the materials program.

- The Program is authorized for eight positions. These positions include one Program Manager and seven Environmental Specialists. Inspectors are crossed trained in X-ray and radioactive materials inspections. There is one inspector vacancy. The Program may need additional staff in the future due to additional work loads being done with no additional staff (e.g., increased controls inspections).

Materials Inspection Program: Status of the inspection program including if an inspection backlog exists and the steps being taken to work off backlog.

- The Program has no overdue inspections and no backlog in licensing actions.

Regulations and Legislative changes: Status of State's regulations and actions to keep regulations up to date. The Program is working on the following two overdue regulations. In addition, the State Regulation Status (SRS) sheet has some effective dates not listed. The Manager said that they would update the SRS.

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, and 35 amendment (67 FR 20249) that became effective October 24, 2002, and is due for Agreement State adoption by October 24, 2005.
- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40, and 70 (68 FR 57327) that became effective December 3, 2003, and is due for Agreement State adoption by December 3, 2006.

The State will need to address the following three regulations in upcoming rulemakings or by adopting alternate legally binding requirements:

- "Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments," 10 CFR Part 71 amendment (69 FR 3697) that became effective on October 1, 2004, and is due for Agreement State adoption by October 1, 2007.
- "Minor Amendments," 10 CFR Parts 20, 30, 32, 35, 40 and 70 amendments (71 FR 15005) that became effective March 27, 2006, and is due for Agreement State adoption by March 27, 2009.
- "Medical Use of Byproduct Material - Recognition of Speciality Boards," 10 CFR Part 35 amendment (70 FR 16336) that became effective April 29, 2005, and is due for Agreement State adoption by April 29, 2008.

Program reorganizations: changes in program organization including program/staff relocations and new appointments:

- No changes in the program's organization are expected.

Changes in Program budget/funding:

- No changes are expected.

Event Reporting, including follow-up and closure information in NMED.

- Five event reports were reported in NMED. All reports were complete and closed where applicable.

Response to Incidents and Allegations: Status of allegations and concerns referred by the NRC for action; Significant events and generic implications.

- One allegation was forwarded to the Bureau. The allegation was appropriately reviewed and closed.

Information exchange and discussion:

- Current State initiatives: A proposal to migrate data to a more secure program was sent to the Chief Information Officer. The changes would provide a more secure system and would be more internet friendly for the State's stakeholders.
- Emerging technologies: The Program has received a license application from a company that will provide adsorptive media to municipal water supplies for removing radium, uranium and other contaminants from water.
- Large, complicated or unusual authorizations for use of radioactive materials: (e.g., major decommissioning and license termination actions): The Program is processing the decommissioning of Thermo-Electron, Company's radiochemistry laboratory.
- State's mechanisms to evaluate performance: Management reviews all licenses and inspections reports. Monthly reports are generated for the status of licensing actions and inspections. The Program has performance measures that include licensing and inspection timeliness and inspection frequencies. The report is sent to senior management. Inspector accompaniments by management are conducted regularly.

Summary: The New Mexico Radiation Control Program appears to be a strong, stable Agreement State program. The program has a strong core of cross-trained staff and the training level for staff members is good. There appears to be good management support for the Program.

Schedule for the next IMPEP review: Based on the results of the last IMPEP review, the review team recommended and the MRB concurred, that the next full review would be in approximately four years. Hence, the next review will be in FY 2009.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

August 3, 2007

Ms. Karen Beckley, Supervisor
Radiological Health Section
Bureau of Health Protection Services
Nevada State Health Division
4510 Technology Way, Suite 300
Carson City, Nevada 89706

Dear Ms Beckley:

A periodic meeting with Nevada was held on July 10, 2007. The purpose of this meeting was to review and discuss the status of Nevada's Agreement State Program. The NRC was represented by me, Ms. Linda McLean, and Mr. Leonard Wert from NRC's Region IV office.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail RRE@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Randy Erickson
Regional State Agreements Officer

Enclosure:
As stated

cc w/enclosure:
Janet Schlueter, Director
Office of Federal and State Materials and
Environmental Management Programs (FSME)

ENCLOSURE 2

PERIODIC MEETING SUMMARY FOR NEVADA

DATE OF MEETING: July 10, 2007

ATTENDEES:

State	NRC
Karen Beckley, Supervisor Adrian Howe, Radiation Physicist Eric Matus, Radiological Staff Specialist Tim Mitchell, Radiation Control Specialist Ed Sweeten, Radiation Physicist Wayne Yates, Radiation Control Specialist Howard Hale, Radiation Control Specialist Louisa Ellis, Administrative Assistant Nicole Millim, Administrative Assistant Kimberly Fahey, Administrative Svcs. Officer	Randy Erickson, Regional State Agreements Officer Linda McLean, Regional State Agreements Officer Leonard Wert, Director, Division of Nuclear Materials Safety Dennis Sollenberger, FSME

DISCUSSION:

The Nevada Agreement State program is administered by the Radiological Health Section (the Section). The Section is located within the Bureau of Health Protection Services, which is part of the State Health Division. The State Health Division reports to the Department of Human Resources. Within the Section, there are two offices (Carson City and Las Vegas). Both offices have the responsibility for the inspection of radioactive materials licenses and response to radioactive materials incidents. In addition, both offices are responsible for machine produced radiation and mammography. Program management and radioactive material licensing is based in the Carson City office.

The last Integrated Materials Performance Evaluation Program (IMPEP) Review was conducted during the week of March 15-18, 2005. At the conclusion of the review, the team recommended that Nevada's performance be found satisfactory for all eight performance indicators reviewed. Accordingly, the review team recommended that the Nevada Agreement State program be found adequate to protect public health and safety and compatible with NRC's program, and that the next full review take place in approximately four years. The review team also recommended that the period of monitoring of the State be discontinued.

Status of State's actions to address all open previous IMPEP review findings and/or open recommendations. Below are the IMPEP recommendations:

1. *The review team recommended that the State develop and implement a staffing plan to fill current vacancies, meet growing program needs and maintain long-term program stability.*

Status: The Section continues to experience staffing shortages, primarily due to the differences between the cost of living in both Carson City and Las Vegas, the salaries that can be offered, and the existing competition for the available health physics personnel in the area. However, the Section has been relatively successful in both replacing staff that has left the Section, and in securing new positions for the program. While they have been unable to increase salaries, they have developed a "Grow Your Own" program. The Section has been able to hire staff with experience in emergency

response or with other related environmental health experience, and train them to be health physics staff, through on the job training and by sending them to training courses. They have found that this method, while it takes longer, has worked to help them maintain a viable staff with the means they have available to them. The legislature has approved five new staff positions which they will begin filling in October 2007, and they are working to obtain authorization for even more staff in the future. It is recommended that this item be closed.

2. *The review team recommends that the Section revise their inspection procedures and provide training to implement a policy for timely and orderly license termination of licensed materials not in use.*

Status: The Section has implemented new procedures to ensure that licenses are terminated in a timely manner. The Section now also has the support of the Attorney General's office in requiring payment of fees, confiscation of materials, and the revocation of licenses, something they did not have before. Prior to this, the Section relied on the licensee's cooperation, whereas now they can take administrative and civil action to resolve issues. The Section continues to work with the Attorney General's office to resolve these cases. It is recommended that this item remain open.

3. *The review team recommends that the Section develop, implement and maintain a reliable and comprehensive licensing and inspection database that serves as an effective and efficient planning, tracking and management tool.*

Status: The Section is still working to achieve a database environment that they are fully satisfied with. They are working through a contractor to develop a database that meets all their needs. However, while this project is still in the development stages, the Section has taken steps towards automating their process which has helped increase work flow. Inspectors now carry Tablet PCs on inspections. These PCs have been loaded with all the inspection forms which has helped the inspection staff increase productivity. The Section believes that the methods they use now, while not optimum, still allow them to maintain a handle on their work as newer programs are developed. It is recommended that this item remain open.

Other topics discussed:

Strengths and/or weaknesses of the State program as identified by the State or NRC including identification of actions that could diminish weaknesses.

Strengths: While the Section has lost some staff members, they have been successful in hiring new and enthusiastic staff through their Grow Your Own program, and the remaining staff has stepped up to help train and mentor the new staff. The program is fully fee funded so funds are no longer an issue, money is available for training, equipment, etc. All of the staff now carry cell phones in an effort to improve communication. The Section now has a new incident response program, and has coordinated with both state and local law enforcement agencies to be an integral part of any activities involving radioactive material. The legislature has been supportive of the Section as well. Initially the new governor submitted a budget with provisions that would have resulted in reduced funding for the Section and no new staff. The legislature not only defeated the governor's budget, they added five new positions to the program.

Weaknesses: While the Section has been successful in hiring new staff due to their Grow Your Own program, they continue to experience low salaries with little hope of reclassification or an increase to the salary structure. While these new hires have worked well, the Section would still like to be able to have a salary structure that would allow them to hire more experienced staff.

Status of State Program including:

a. Staffing and training:

The Section has a total of 17 staff members. A total of 5.5 positions are dedicated to the radioactive materials program, and of those a total of 2.5 are fully qualified. The Section currently has three vacancies in addition to the five new positions that the legislature has approved. Of those five new positions, a total of one, possibly two new positions will be dedicated to the radioactive materials program. The Section has the funding and the authorization to use overtime pay which they have been using when necessary. Training for the new staff members has been ongoing. Funding for training has not been an issue, but the Section has identified the availability of training classes, the timing of the classes, and the increased competition to get into the available classes as issues they are facing.

b. Materials Inspection Program:

Currently there is one overdue inspection, but this is a mobile nuclear medicine van that is only in the state two days per month and works in a town located on the opposite side of the state from their office. The Section is working with the licensee to perform this inspection. The Section is working to perform reciprocity inspections, has completed all their Increased Controls inspections, and is working towards implementation of the General License Program.

c. Regulations and Legislative changes:

Currently they have one regulation change that is behind schedule. However, in reviewing the SRS Data Sheet report with the Section, it appeared that several regulations had been reviewed by NRC, some with comments, some without comments, but that no final review of the regulations had been performed. The Section reviewed their records and confirmed that while the regulations have been implemented, a final review had not been performed. The Section indicated they would send these to NRC for review.

d. Program reorganizations:

There have been no program reorganizations since the last review.

e. Changes in Program budget/funding.

In conjunction with the approval for new staff, the legislature approved a fee increase which should take affect in January 2008.

Event Reporting, including follow-up and closure information in NMED.

A total of 52 events were open during the previous Periodic Meeting on March 2, 2006. The Section has worked to close those and only seven remain open.

Response to Incidents and Allegations:

a. Status of allegations and concerns referred by the NRC for action.

No allegations were referred by NRC to the Section since the previous Periodic Meeting on March 2, 2006.

b. Significant events and generic implications.

Nothing to report.

Information exchange and discussion:

a. Current State initiatives:

The Section has been active in the area of emergency response. They have successfully integrated with state and local law enforcement agencies to share information and become known to them. The Section has also worked with state and federal agencies, including emergency response organizations to become an integral part of their activities. The Section is also working with Homeland Security as part of their response program for any radiological terrorism events.

b. Emerging technologies:

Nothing to report.

c. Large, complicated or unusual authorizations for use of radioactive materials, including, (e.g., major decommissioning and license termination actions).

Nothing to report.

d. State's mechanisms to evaluate performance (as applicable):

The Section has been working to better organize and establish formalized internal auditing. Some of these initiatives include improved tracking of staff training and an improved training plan, more structured inventories of material's possessed, and inspector accompaniments. The Section looks to improve licensee and inspection tracking when a new database is ultimately developed and implemented.

Other topics discussed:

The Section moved to new offices since the previous Periodic Meeting on March 2, 2006. These offices better serve their needs, including an improved and more secure source storage room.

The Section recently lost one staff member in the Las Vegas office, a position they have found difficult to fill. While they have a plan to send staff from Carson City to Las Vegas to accommodate the workload, the Las Vegas area supports approximately 60 percent of the State's approximate 250 licensees. Consideration of replacing that staff member in the Las Vegas office was discussed with the Section.

The Section has modified their licensing program since the recent GAO audit. They are now hand delivering all new licenses and requiring government ID verification prior to providing the license. All notifications for reciprocity are telephonically verified with the licensing entity prior to authorizing reciprocity in their state. The Section is also considering the use of security paper for all licenses.

Summary:

The Nevada program appears to be a strong, viable, and stable Agreement State program. The program has a strong foundation, has found alternate avenues to problems they have faced such as staffing and salaries, is becoming fully integrated within the law enforcement and emergency response communities, and has worked to develop an enforcement capability that has previously not been available to them. There also appears to be strong management and legislative support for the program.

The next IMPEP review is currently scheduled for FY 2009.

August 30, 2007

Clyde Bolton, Director
Division of Public Health Protection & Safety
Department of Public Health
275 East Main Street
Mail Stop HS 2E-D
Frankfort, KY 40621-0001

Dear Mr. Bolton:

A periodic meeting with Kentucky was held on July 31, 2007. The purpose of this meeting was to review and discuss the status of Kentucky's Agreement State program. NRC was represented by James Kottan, via telephone, and me. Specific topics discussed at the meeting included all performance indicators and the program's progress on the seven recommendations made during the 2004 Integrated Materials Performance Evaluation Program (IMPEP) review.

I have completed and enclosed a general meeting summary. It was noted during the meeting that the program's overall performance has continued to improve since the 2005 and 2006 periodic meetings especially in the area of staffing for the program. Additional improvement is still needed in the performance indicators of "SS&D Evaluation Program" and "Compatibility Requirements." These indicators were found "Satisfactory, but Needs Improvement" during the 2004 IMPEP review. Work on addressing the recommendations made during the 2004 IMPEP review is in progress. All but one of the recommendations remain open.

This meeting will be discussed at the next quarterly Special Management Review Board meeting.

If you feel that my conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at 301-415-2320 or via email at kxs@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Kathleen N. Schneider
Senior Project Manager
State Agreements and Industrial Safety Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosure: Periodic Meeting Summary for Kentucky

cc: Dewey Crawford, Manager
Matthew McKinley, Supervisor

ENCLOSURE 3

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR KENTUCKY

DATE OF MEETING: July 31, 2007

NRC

Kathleen Schneider, Senior Project Manager, STP
James Kottan, RSAO, Region I via teleconference

STATE

Matthew McKinley, Supervisor, Radioactive Materials Section
Vicki Jeffs, consultant to the Radioactive Materials Section

BACKGROUND:

During the July 2004, IMPEP review, the review team found Kentucky's performance to be "Satisfactory" for five performance indicators and "Satisfactory, but Needs Improvement" for three performance indicators. Seven recommendations were made by the IMPEP team. Accordingly, the review team recommended and the Management Review Board (MRB) agreed with the finding that the Kentucky Agreement State program is adequate to protect public health and safety and compatible with NRC's program. The team considered a finding of "Adequate, but Needs Improvement," but noted that the Radiation Health Branch (the Branch) identified a number of needed improvements; developed, and in some cases implemented, action plans to correct specific performance issues; and, has been approved to expand the Radioactive Materials Section's (the Section) staff. To monitor the progress of the Commonwealth's program with regard to their action plans, the MRB directed staff to conduct a periodic management meeting one year after the IMPEP review. In July 2005, a periodic meeting was held with Kentucky.

Subsequent to the July 2005, Kentucky periodic meeting, an MRB was held on October 17, 2005. The MRB requested quarterly conference calls be conducted between the appropriate Kentucky and NRC staffs to monitor the State's performance and that a periodic meeting should take place in July 2006, due to the performance found during the July 2005, meeting. Quarterly conference calls were held in February and May 2006.

A periodic meeting was again held with Kentucky on July 6, 2006. During this periodic meeting it was noted that Kentucky's program had improved its overall performance since the 2005 periodic meeting. The results of the July 6, 2006, periodic meeting were discussed during an MRB held on May 10, 2007. The MRB questioned Kentucky about open recommendations from the previous IMPEP, staffing and issues regarding regulations. Kentucky responded that all recommendations would be resolved by the next IMPEP. The staff recommended that monitoring of the Kentucky program continue. The MRB agreed with this recommendation that the period of monitoring continue. Another quarterly conference call was held in February 2007.

This summary describes the July 31, 2007, periodic meeting.

DISCUSSION:

Status of State's actions to address all open previous IMPEP review findings and/or open recommendations.

The proposed status for each of the recommendations and suggestions in Section 5.0 of the 2004 Kentucky final IMPEP report is summarized below.

Recommendation 1: The review team recommends that the Branch upgrade their database so that all relevant licensee data are incorporated and maintained to ensure that inspections can be scheduled and performed in accordance with the requirements of NRC Inspection Manual Chapter (MC) 2800. Specifically, initial inspection due dates were not entered, and thus a large number of initial inspections were overdue.

Status:

The Radioactive Materials Section Supervisor (Supervisor) has continued to enhance the permanent upgrade to the database completed in 2006. The Supervisor provided both hard copies and a demonstration of the database capabilities. All relevant licensee data is incorporated into the database and maintained to ensure that all inspections can be scheduled and performed in accordance with the requirements of MC 2800. In addition, the Section conducted an audit of all inspection files against the database using temporary help. In several instances where inspection reports are missing from the files, inspections are being rescheduled and performed. The Supervisor expects to have all inspections completed by the 2008 IMPEP review.

It is recommended that this item be closed at the next review.

Recommendation 2: The review team recommends that the Branch identify those licensees who require financial assurance and take appropriate action to have them comply with the Commonwealth's decommissioning and financial assurance requirements.

Status:

A small number of licensees have been identified as requiring financial assurance. The issues have been discussed with the licensees; however, letters have not yet been sent explaining the requirements. The Section has prepared a flow-chart for financial assurance requirements. Work in this area to identify licensees who are required to have financial assurance through the database is ongoing.

This recommendation remains open.

Recommendation 3: The review team recommends that the Branch document incident and allegation responses in accordance with its procedures and provide training on their procedures to all technical staff.

Status:

An annual training class is conducted for staff on the proper documentation of incidents and allegations as well as a booklet that includes NRC guidance and the Branch's policy is provided to staff. Staff use procedures for documenting responses to incidents and allegations. It was noted that events are being submitted to the Nuclear Materials Events

Database (NMED). Review of documentation was not conducted during the meeting and thus it is recommended that this area be reviewed during the next IMPEP review.

This recommendation remains open.

Recommendations 4-7:

The review team recommends that the Branch establish, implement and document a training program for Sealed Source and Device (SS&D) reviewers.

The review team recommends that the registration certificate evaluation criteria and document format be consistent with NUREG-1556, Volume 3.

The review team recommends that the Branch review and determine the status of SS&D registrations issued to non-Kentucky manufacturers and take appropriate action to either update or inactivate the registration certificates.

The review team recommends that the Branch implement an enforceable mechanism (e.g., rule or license condition) to have the manufacturers report defects, deviations or non-conformance of safety-related systems, structures, or components and document follow up actions.

Status on 4-7:

The Branch's sole manufacturer is Ronan Engineering. The Section has established a training program. The Branch had hired 0.5 FTE to perform SS&D functions. After training and qualification, this individual will be tasked with terminating Ohmart's old registries since they no longer manufacture in KY; developing a registration certificate evaluation and document format consistent with NUREG-1556, Volume 3; and developing license conditions to require Ronan to report defects, deviations, or non-conformance of safety related system, structures or components. Thus far, the individual has attended NRC's SS&D training workshop and on-the-job training via a contractor since the July 2006, Periodic Meeting.

These recommendations remains open.

Strengths and/or weaknesses of the State program as identified by the State or the NRC, including identification of actions that could diminish weaknesses.

During the 2004 IMPEP both the staffing level and a flawed database were identified weaknesses for the program. The Supervisor believes that now the upgraded database and the present staffing level can be considered as strengths of the Section.

Feedback on NRC's program as identified by the State, including identification of any action that should be considered by NRC.

The Supervisor discussed the practice of identifying only one contact for email distribution of information, especially those items that are distributed on the Radiation Control

Program Director Only list server. The Branch has not always responded timely to requests that are sent solely to the Branch Manager, especially when he is not in the office. NRC staff discussed the various list server memberships and will explore the whether it is possible to include other State staff on the Radiation Control Program Director Only list server. In addition, the Supervisor will explore the use of proxy mail for the Branch Manager on the Commonwealth's mail server.

Status of State program including:

a. Staffing and Training:

The Radiation Health Branch is located in the Department for Public Health offices in Frankfort. The Branch Manager is responsible for the Radioactive Materials Section, Radiation Producing Machines Section, and the Radiation/Environmental Monitoring Section. The position reports to the Director, Division of Public Health Protections & Safety. The Supervisor is primarily responsible for materials licensing and compliance activities.

There are currently six technical staff members in the Section and the Supervisor. One staff member who was activated to military duty in May 2005, is returning to the program in August 2007. An additional offer has been made, which would bring the staffing levels to eight technical staff members. Through a February 2007, contract, the Section has obtain the services of a retired Supervisor to revise the regulations. The Branch has made significant progress to fully staff the program and the support and commitment by the Director to improve program performance is evident. There was no staff turnover during the past year. Two staff members are fully-qualified. The remaining staff members are qualified to perform licensing and inspection of certain types of licensees and are working towards full qualification.

In October 2006, the salary levels were increased and most staff members received 5% or greater increase. The Supervisor believes that this staffing level will enable the Commonwealth address all the previous weaknesses and be found adequate and compatible during the 2008 IMPEP review.

b. Materials Inspection Program:

The Branch's inspection priorities are generally the same as those listed in MC 2800, with some being more restrictive. At the time of the last IMPEP, there were 10 core licenses currently overdue by more than 25 percent of the NRC inspection frequency. The Supervisor stated that he continues to work towards the goal of no overdue inspections by the next IMPEP review. The Branch has completed the initial inspections for 20 licensees that were identified as requiring increased controls. A precicensing visit will be conducted for all new licensees requiring increased controls. The 2007 inspector accompaniments have not been completed, but will be prior to the 2008 IMPEP review.

c. Regulations and Legislative changes:

There have been no legislative changes since the last IMPEP review.

The Branch is currently working on 13 NRC amendments packages, 10 of which are either overdue or only the proposed regulation had been reviewed by NRC. Work on revising the regulations began in February 2007, via a one-year contract with a former Kentucky supervisor. Ten amendment packages have been completed by the contractor and will be submitted to the Supervisor shortly. The Supervisor anticipates submitting the draft regulation packages to NRC for review in the fall time frame to allow promulgation of final regulations prior to the next IMPEP. The following regulations are overdue:

- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 35 and 36 amendments (63 FR 39477 and 63 FR 45393) that became effective October 26, 1998.
- “Respiratory Protection and Controls to Restrict Internal Exposure,” 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524) that became effective February 2, 2000.
- “Energy Compensation Sources for Well Logging and other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337) that became effective May 17, 2000.
- “New Dosimetry Technology” 10 CFR parts 34, 36 and 39 amendments (65 FR 63749) that became effective January 8, 2001.
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162) that became effective February 16, 2001. The Branch has amended the appropriate licenses with license conditions compatible with the requirements in 10 CFR 32.52 (a) and (b). The Branch has not adopted the remainder of the amendment.
- “Revision of the Skin Dose Limit,” 10 CFR 20 amendment (67 FR 16298) that became effective April 5, 2002.
- “Financial Assurance for Materials Licensees,” 10 CFR 30, 40, and 70 amendments (68 FR 57327), that became effective on December 3, 2003.

The following regulations have not been submitted as final regulations for NRC review:

- “Clarification of Decommissioning Funding Requirements,” 10 CFR Parts 30, 40, and 70 amendments (60 FR 38235) that became effective November 24, 1995.
- “Low-Level Waste Shipment Manifest Information and Reporting,” 10 CFR Parts 20 and 61 amendments (60 FR 15649 and 25983) that became effective March 1, 1998.
- “Transfer for Disposal and Manifest; Minor Technical Conforming Amendments,” 10 CFR Part 20 amendment (63 FR 50127) that became effective November 20, 1998.

- “Medical Use of Byproduct Material,” 10 CFR 20, 32 and 35 amendments (67 CFR 20249) that became effective October 24, 2002.

In addition, the following regulations which will be due prior to the upcoming IMPEP review are being prepared by the contractor:

- “Compatibility with IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments,” 10 CFR 71 amendments (69 FR 3698), that became effective on October 1, 2004.
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR 30 amendments (70 FR 2001) that became effective July 11, 2005.
- “Medical Use of Byproduct Material - Recognition of Specialty Boards,” 10 CFR 35 amendments (70 FR 16336; 71 FR 1926) that became effective April 29, 2005.

d. Program reorganizations:

There were no reorganizations during this period.

e. Changes in program budget/funding:

There has been no change in the fees during this period. The Supervisor indicated that revisions to the fee structure will be considered after the completion of the revision of regulations needed for compatibility and adequacy.

Event reporting, including follow-up and closure information in NMED.

It was noted that events are being submitted to the NMED. One individual is assigned responsibility for submitting NMED information. Two incidents and several allegations have been handled by the program for this calendar year. These are tracked by the Supervisor via the "Radioactive Materials Section, Monthly Report". See response to Recommendation 3 of the 2004 IMPEP report above.

Response to incidents and allegations.

a. Status of allegations and concerns referred by the NRC for action:

There were no allegations or concerns referred by NRC to the Branch during this period.

b. Significant events and generic implications.

No significant events were identified or discussed during the periodic meeting.

Status of the following program areas:

a. Sealed Source & Device Program:

See response to Recommendation 4-7 of the 2004 IMPEP report above.

b. Uranium Mills Program; and/or,

Not applicable.

c. Low-Level Waste Program.

No change in status was identified.

Action items resulting from the meeting.

NRC staff provided the Regulations Toolbox CD and the Office of Federal and State Material and Environment Management Programs organization chart to the Section Supervisor following the meeting.

NRC staff is attempting to obtain a copy of the statements of considerations for 10 CFR, which is out of print, for the Supervisor.

NRC staff is exploring whether the Supervisor can be included on all list servers.

CONCLUSIONS:

The program's overall performance continues to improved since the 2006 periodic meeting. Additional improvement is still needed in the performance indicators of "SS&D Evaluation Program" and "Compatibility Requirements." These indicators were found "Satisfactory, but Needs Improvement" during the 2004 IMPEP review. However, with the present staffing levels and support from Kentucky management for the Section, NRC staff believes that Kentucky will be in a position to meet the requirements for all performance indicators. NRC staff concluded that the next IMPEP review should be conducted as scheduled in Fiscal Year 2008, (tentatively July 2008) and that quarterly monitoring calls should continue.

**Agenda for Management Review Board Meeting
September 20, 2007, 2:00 p.m. - 4:00 p.m. EDT, O-3-B2**

1. Announcement of Public Meeting to all attendees and request for identification of any members of the public participating in this meeting.
2. MRB Chair convenes meeting. Introduction of MRB members, Agreement State representatives, and other participants. (OAS Liaison is Roland Fletcher of Maryland)
3. Discussion of Periodic Meetings:
 - a. New Mexico (June 28, 2007) - ML072070474 - McLean
 - b. Nevada (July 10, 2007) - ML072150574 - Erickson/Sollenberger
 - c. Kentucky (July 31, 2007) - ML072490049 - Kottan/Schneider
4. Establishment of Precedents/Lessons Learned
5. Adjournment

Invitees: Martin Virgilio, EDO
Charles Miller, FSME
Karen Cyr, OGC
Mark Satorius, RIII
Roland Fletcher, MD
Janet Schlueter, FSME
Robert Lewis, FSME
Duncan White, FSME
Aaron McCraw, FSME
Kim Lukes, FSME
Kathleen Schneider, FSME

Linda McLean, RGN IV
Randy Erickson, RGN IV
James Kottan, RGN I
Dennis Sollenberger, FSME
John Parker, NM
Karen Beckley, NV
Dewey Crawford, KY
Matthew McKinley, KY
William Rautzen, FSME
Diana Diaz-Toro, OEDO
Monica Orendi, FSME