



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 3, 2014

MEMORANDUM TO: Roy P. Zimmerman, Acting Deputy Director  
Materials, Waste, Research, State, Tribal,  
and Compliance Programs  
Office of the Executive Director for Operations

Bradley W. Jones, Assistant General Counsel  
for Reactor and Materials Rulemaking  
Office of the General Counsel

Brian E. Holian, Acting Director  
Office of Federal and State Materials  
and Environmental Management Programs

Kriss M. Kennedy, Deputy Administrator  
Region IV

FROM: Michelle R. Beardsley, Health Physicist /RA/  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

SUBJECT: SEPTEMBER 23, 2014 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of the periodic meetings held with the Tennessee, Kentucky and Maine Agreement State Programs, has been scheduled for **Tuesday, September 23, 2014, from 1:00 p.m. to 4:00 p.m. ET, in Two White Flint, Room B05**. The summaries for each of the meetings are enclosed (Enclosure 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 (610) 337-6942 or [Michelle.Beardsley@nrc.gov](mailto:Michelle.Beardsley@nrc.gov).

Enclosures:

1. Tennessee Summary Report
2. Kentucky Summary Report
3. Maine Summary Report

cc: Julia Schmidt, NE  
Organization of Agreement States  
Liaison to the MRB

MRB Members

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<b>OFFICE</b>	MSSA/ASPB	MSSA/ASPB
<b>NAME</b>	KMeyer	MBeardsley <i>via email</i>
<b>DATE</b>	09/03/14	09/03/14

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DATE OF MEETING: April 17, 2014

<b>NRC Attendees</b>	<b>TN Department of Environment and Conservation Attendees</b>
Donna Janda, RSAO, Region I	Chuck Head, Senior Director, Land Resources
Michelle Beardsley, Health Physicist, FSME	Debra Shults, Director, Division of Radiological Health
	Anthony Hogan, Deputy Director
	Billy Freeman, Deputy Director for Field Operations
	Johnny Graves, Licensing Manager
	Ronald Parsons, Health Physicist
	Ruben Crosslin, Health Physicist

**DISCUSSION:**

During the 2012 Integrated Materials Performance Evaluation Program (IMPEP) review of the Tennessee Agreement State Program (the Program), the review team found the State's performance satisfactory for all seven performance indicators. No recommendations regarding Program performance were made by the IMPEP review team. On July 10, 2012, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Tennessee Agreement State Program. The MRB found the Program adequate to protect public health and safety and compatible with NRC's program. The MRB directed that the next full IMPEP review take place in approximately four years.

Topics covered during this meeting included:

Program Strengths

The Program identified the following list of strengths:

- An experienced and well-trained licensing and inspection staff with health physics expertise
- Unique licensees such as waste processors
- No turnover in licensing staff
- Convenient access to ORISE, REACTS, DOE (all based in Tennessee) when needed
- Management support for training and continuing education; sending more than one staff member to National meetings
- Information exchange between licensing and inspection staff
- Well-staffed in inspection program; able to meet metrics; cross-training of inspection staff allows for flexibility in inspection program
- Knowledge sharing opportunities including in-house training and monthly videoconferences with inspectors

- Hiring process has changed which allows for flexibility in selection of qualified candidates

### Program Weaknesses

The Program noted that salaries continue to decline in comparison to other State and NRC counterparts.

### Agreement State Program Staffing and Training

The Program currently has approximately 24 full-time equivalent staff members including managers with five staff vacancies. Two of these vacant positions have been upgraded to manager positions. Interviews were scheduled to be conducted the week after this meeting. An offer has been made to an individual for one of the vacant technical staff positions. No positions have been eliminated. The Program does not have any staff going through the qualification process at this time.

### Organization

The Tennessee Agreement State Program is administered by the Division of Radiological Health, which is located in the Bureau of the Environment under the Department of Environment and Conservation (the Department). Licensing, registration and rule development activities are conducted in the Central office located in Nashville. Inspection and enforcement activities are conducted in four field offices located in Chattanooga, Knoxville, Memphis, and Nashville.

The Department is currently undergoing reorganization. Some management and supervisory positions are expected to be eliminated. In addition, the Program noted that job titles are changing for technical positions in the Program. These positions will no longer be listed under a health physicist title. Correspondingly, salary grades will also change for these positions. The Program is in the process of identifying program efficiencies and expects to move some workload functions from the field offices to the Central office as part of the reorganization effort.

### Program Budget/Funding

The Program enacted a fee increase which was effective in May 2013. Fees were raised 20-30 percent in the X-ray and radioactive materials programs. The State has an overall budget shortfall of \$200 million impacting State employees' salary increases which were scheduled to begin in July 2014.

### Inspection and Licensing Programs

The Program reported no backlog in inspections since the 2012 IMPEP review. Inspection reports are being tracked and issued within 30 days of the conclusion of the inspection. The Program drafted and implemented a new inspection procedure for conducting initial inspections. Staff members were trained on the new procedure. The Program continues to conduct reciprocity inspections for greater than 20 percent of candidate licensees. Regional Field Office managers continue to conduct annual supervisor accompaniments for all qualified inspectors.

Field Office managers who also conduct inspections are accompanied by other managers on an annual basis.

The Program currently has approximately 580 specific licenses. Every six months, the Program files a report to the State legislature on permitting actions, including radioactive materials licenses. The Program noted that there has never been a licensing action that was not reviewed or completed within the required timeframe. New licenses receive priority status for completion. The licensing staff has 60 days to review the license application. This 60-day time limit is set by statute. Standard amendments and renewal actions do not have time limits set by statute; however, the internal timeframe for review of the licensing actions is 10 business days for amendments and 20 business days for renewals and SS&D actions. The Program has a goal of 95 percent of the actions being completed within the set timeframes. Licensing staff noted that they have not experienced significant challenges meeting these goals.

The licensing staff uses the pre-licensing guidance to review licensing actions and conducts pre-licensing site visits when applicable.

#### Regulations and Legislative Changes

There have not been any legislative changes or proposals that have affected the Program since the 2012 IMPEP review. The Program currently has no overdue regulations. The Program noted that Tennessee regulations for the control of radiation, which are found in the "Rules of the Department of Environment and Conservation," were moved from Chapters 1200-02-04 through 1200-02-12 to Chapters 0400-20-04 through 0400-20-12 since the 2012 IMPEP review.

On February 27, 2014, the Program submitted three proposed regulation amendments to NRC for review. The Program is researching the changes in the remaining regulation amendments, including the new 10 CFR Part 37, to prepare proposed rules for submission to NRC for review.

#### Event Reporting

The Program has reported 40 events to the NRC since the 2012 IMPEP review. Seven of the reported incidents were for events that occurred prior to the 2012 IMPEP review and had not been previously reported to NRC. The Program continues to close out events in NMED as appropriate.

#### Response to Incidents and Allegations

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program is aware of the need to maintain an effective response to incidents and allegations. Since the 2012 IMPEP review, NRC has not transferred any allegation to the Program for follow up action. The Program has followed up on six allegations which were received by the Program since the 2012 IMPEP review.

Sealed Source and Device (SS&D) Evaluation Program

The Program currently has approximately 40 active SS&D registration sheets, including one new sheet for a custom device (calibrator).

Current State Initiatives

The Program managers noted that the Department is working toward the use of electronic documents (e.g., fillable forms, database). In addition, the State is focused on budget accountability and is looking for efficiencies in State programs in order to address the State budget shortfall anticipated for Fiscal Year 2015 beginning in July.

Large, Complicated, or Unusual Authorizations for Use of Radioactive Material

The Program issued an authorization to a waste processor for treating wastewater received from nuclear power plants. The Program worked closely with Water Resources staff and the City of Oak Ridge on this authorization.

In addition, the Program addressed several other large, complicated or unusual authorizations since the 2012 IMPEP review, including the issuance of a new waste processing license and a new nuclear laundry license. The Program has approved the sale and name change of one waste processor (two locations of use) to another waste processor. The Program has decommissioned and terminated the license of a company that filed for bankruptcy. The former licensee's financial assurance mechanism was used for the decommissioning activities.

State's Mechanisms to Evaluate Performance

The Program generates monthly reports and conducts monthly meetings as tools for evaluating Program performance in the licensing and inspection areas. The Program also develops an annual work plan as part of a Bureau of the Environment initiative to set performance goals.

**CONCLUSIONS:**

The State of Tennessee Radiological Health Program continues to be an effective, well-maintained Agreement State program with an experienced and well-trained staff. There are five vacancies in the Program at this time; however, the Program is effectively managing its licensing and inspection activities. NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2016 (tentatively April 2016).

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR  
KENTUCKY CABINET OF HEALTH AND FAMILY SERVICES  
RADIATION HEALTH PROGRAM

DATE OF MEETING:            July 9, 2014

<b>Nuclear Regulatory Commission (NRC) Attendees</b>	<b>Kentucky Cabinet of Health and Family Services Attendees</b>
Monica Ford, Regional State Agreements Officer, Region I	Matthew McKinley, Administrator, Radiation Health Program
James Clifford, Division Director, Region I	Curt Pendergrass, Supervisor, Radioactive Materials Section
Duncan White, Branch Chief, Office of Federal and State Materials and Environmental Management Programs (FSME)	Kraig Humbaugh, Senior Deputy Commissioner, Department for Public Health (exit only)
	Allyson Taylor, Policy Advisor, Office of the Commissioner, Department for Public Health (exit only)
	Kathy Fowler, Division Director, Division of Public Health Protection and Safety (exit only)

**DISCUSSION:**

During the 2012 Integrated Materials Performance Evaluation Program (IMPEP) review of the Kentucky Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for the performance indicators Technical Staffing and Training, Technical Quality of Licensing, Technical Quality of Inspections, Technical Quality of Incidents and Allegations, and Sealed Source and Device Evaluation Program; satisfactory but needs improvement for the performance indicator Compatibility Requirements; and unsatisfactory for the performance indicator Status of Materials Inspection Program. On September 6, 2012, the Management Review Board (MRB) met to consider the proposed final IMPEP report. The MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The MRB added one recommendation to the final IMPEP report. The MRB directed that Kentucky continue to remain in monitoring status, that calls between the Kentucky Department for Public Health (DPH) and NRC staffs continue to be conducted quarterly, and that a Periodic Meeting take place approximately two years from the June 2012 IMPEP review. DPH provided their response to the final IMPEP report in a letter dated October 18, 2012.

**TOPICS COVERED DURING THE MEETING INCLUDED:**

**Program Strengths**

The Program noted two strengths. Program management stated that program staff go above and beyond to figure out better ways to do things and are constantly working together to look for ways to improve the Program. This leads to good staff morale and camaraderie. The Program also noted that managerial support for the Program is excellent at all levels of management.

### Program Challenges

Program management stated that one of the Program's challenges is their end licensing product database. The database is very old and is a DOS based system. The Program is unable to do any type of watermark or headers, including security markings, on its licenses. The Program is working on developing a new database in order to address the issues with the current database. Another challenge is the Program's fee structure. Currently the Program charges approximately 10 percent of NRC's fees from the 2008/2009 timeframe. The fees also go into a general fund which can be used by anyone in the Department for Public Health. The Program's regulation promulgation process is a third challenge for the Program. The process can be very lengthy and often causes rules to be promulgated outside of the three year timeframe allowed by the NRC. The Program is considering changing their rules to adopt NRC's regulations by reference. This would alleviate the lengthy rule promulgation process once the adoption by reference is in place.

### Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program also expressed its appreciation for the NRC training classes. The Program did make one suggestion regarding NRC's implementation of Agreement State adoption of NRC rule changes. The Program stated that the way NRC rolls out its changes to regulations, which currently are issued one rule at a time, can be frustrating and cumbersome for the States to deal with. It can also make it difficult for a State to keep their regulations current. The Program suggested a more structured approach to regulations which might include FSME issuing all rule changes that happened in a six or twelve month period as one document and requiring the States to adopt those regulations within three years. The Program also suggested that NRC could formalize a holistic approach to regulations in a policy statement that would outline the rule adoption process for the Agreement States.

### Agreement State Program Staffing and Training

At the time of the IMPEP review, the Program was composed of one program administrator, one supervisor, and seven technical staff positions (one of which was on military deployment and not scheduled to return until December 2013 and two of which were vacant). Since the IMPEP review the Program hired two new technical staff members to fill the vacant positions identified during the IMPEP review and the individual on military deployment has returned. The Program also had an additional staff member leave the Program in July 2013 and subsequently hired another new staff member in December 2013 to fill that program vacancy. At the time of the Periodic meeting the Program is fully staffed. The three new staff members are currently working on their qualifications to become qualified license reviewers and inspectors. Since joining the Program, one new staff member has become fully qualified in industrial inspections and is now working on becoming qualified to perform medical inspections, the second new staff member is almost fully qualified in industrial inspections, with the exception of industrial radiography inspections, and will begin working on becoming qualified in medical inspections once the industrial qualifications are completed, and the third new staff member is working on becoming a qualified inspector for medical inspections, however is not currently qualified to perform any types of inspections since they have only been with the program approximately seven months. All of the new staff have qualification journals to use as they progress through



their qualifications. The Program will ensure that the qualification journal has, at a minimum, the same requirements as NRC's Inspection Manual Chapter 1248 "Formal Qualifications Program for Federal and State Material and Environmental Management Programs."

The Program continues to support staff training and utilizes the NRC training courses when available. The Program is hopeful that two of their new staff will be able to attend the S-201 course in the next NRC fiscal year. The Program also hosted a Sealed Source and Device Evaluation Training workshop in March 2014.

### Organization

The Program is administered by the Radiation Health Branch, which is located within the Department for Public Health. The Department for Public Health is part of the Cabinet for Health and Family Services.

### Program Budget/Funding

The Program currently charges around ten percent of NRC's fees from the 2008/2009 time frame. The fees go into a general fund which can be used to fund any program in the Department of Public Health. The Program is looking at changing its fee structure so that each modality would be charged a fee. This would require the Program to separate out each license based on modality so that fees are charged appropriately.

### Licensing and Inspection Programs

The Program currently has approximately 398 specific licenses. The Program has completed 1509 licensing actions since the last IMPEP review. At the time of the periodic meeting there were 32 pending licensing actions in house. The longest action has been in house since December 2013 (a new license). The Program has been working with the new licensee to obtain additional information that was needed before the license can be issued. The average turnaround time for a licensing action is 43 days. All completed licensing actions undergo a three step process: initial review, peer review, and supervisor review before being signed by the program administrator and then issued.

The IMPEP review found that the Program completed 41 percent of its priority 1, 2, and 3 and initial inspections overdue during the review period. Since the IMPEP review the Program has conducted one inspection overdue which was an initial inspection. This inspection was overdue at the time of the IMPEP review. Based on the number of inspections completed since the IMPEP, the Program is calculating that they have completed 1.53 percent of Priority 1, 2, and 3 and initial inspections overdue. The Program's inspection frequencies are the same as NRC's inspection frequencies as listed in Inspection Manual Chapter 2800. As mentioned above one initial inspection was completed greater than one year from license issuance since the IMPEP review. Program management stated that the Program has inspected greater than the required 20 percent of candidate licensees for reciprocity in calendar year 2013 and to date in calendar year 2014. The Program's policy is to issue inspection findings to their licensee's within 30 days from the date of the inspection. The Program performed supervisory accompaniments for its entire staff in 2012 and 2013. The Program has two supervisory inspection accompaniments left to complete in 2014.

The 2012 IMPEP review generated one recommendation for this performance indicator. The recommendation is listed below along with the status.

**Recommendation 1:** The MRB recommends that the Branch perform a self-assessment to determine the effectiveness of its oversight of the inspection program and that the results of this self-assessment be reviewed as part of the periodic meeting.

**Status:** The Program submitted the self-assessment and the resulting programmatic changes to the NRC on July 3 and 7, 2014. All of these documents were discussed with the Program during the periodic meeting. The changes put in place by the Program will help to identify and prevent circumstances in the future that would cause program management to be unaware of the extent of the actual backlog of inspections that may be occurring as the Program responds to an unusual event. Along with updating several procedures the Program also put a new inspection tracking database into place. This new database allows for simplified tracking of inspection metrics and removes the uncertainty that resulted from the transition of one previous database to another during the timeframe covered by the previous IMPEP review. This transition between databases made it difficult for the Program to compile continuous data during the 2008-2012 timeframe and therefore the Program struggled to complete certain data dependent sections of the IMPEP questionnaire making them unaware of the overall impact of the performance of overdue inspections.

#### Regulations and Legislative Changes

The Branch is designated as the Commonwealth's radiation control agency. No legislation affecting the Program was passed since the last IMPEP review and the Program is not subject to sunset requirements.

When the Program promulgates a rule they must first send the draft changes to the Cabinet for Health and Family Services for comment. Then once those comments are incorporated the draft changes go to the Legislative Review Committee for comment. Lastly the rules go to a subcommittee in the Legislature for approval for public comment. Then once public comments are received the regulations must go through the entire process again before becoming final. This process can take several years to complete.

The Program stated that given the number of issues they are having in regards to adopting regulations they are in the process of exploring adopting applicable sections of NRC's Title 10 Code of Federal Regulations (CFR) by reference. The Program stated that they plan to address 10 CFR Part 37 this way and hope to get it to the Cabinet by the end of calendar year 2014. The Program believes that they will be able to get this regulation promulgated in final before the March 2016 deadline, however if they determine they will not meet the deadline the Program will implement adoption of 10 CFR Part 37 by license condition.

Six NRC regulations are overdue for implementation:

- "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material," 10 CFR Parts 30, 31, and 32 (65 FR 79162), that was due for Agreement State implementation on February 16, 2004;

- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 (72 FR 45147 and 54207), that was due for Agreement State implementation on October 29, 2010;
- “Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material; Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendment (72 FR 58473), that was due for Agreement State adoption by December 17, 2010;
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, 150 amendment (72 FR 55864), that was due for Agreement State adoption by November 30, 2010;
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendment (72 FR 68043), that was due for Agreement State adoption by February 15, 2011; and
- “Medical Use of Byproduct Material – Authorized User Clarification,” 10 CFR Part 35 amendment (74 FR 33901), due for Agreement State adoption by September 28, 2012.

#### Event Reporting

The Program has had eight reportable events since the IMPEP review. All reportable events have been reported to the NRC accordingly and appropriate follow-up through NMED has occurred. The Program stated that all staff is aware of event reporting criteria.

#### Response to Incidents and Allegations

The Program is aware of the need to maintain an effective response to incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety and staff is dispatched to perform onsite investigations when necessary. The Program appropriately communicates reportable incidents to the NRC Operations Center and Region I. The Program continues to be sensitive to allegations. The Program has received one allegation and one additional concern, involving items being sold on eBay, for action since the IMPEP.

#### Sealed Source and Device Evaluation (SS&D)

There have been no changes in the SS&D program since the IMPEP. The Commonwealth has one device manufacturer with 12 active SS&D registrations. The Program has completed two amendments to active registries since the IMPEP review and the Program has no pending actions at the time of this meeting. The last action received, an amendment, was completed and the revised sheet was issued on August 16, 2013. The Program has two qualified SS&D reviewers. The Program is working to qualify one more individual to perform SS&D reviews. This individual is learning the process as SS&D requests come in. The Program hosted the SS&D Workshop in March 2014.

Low-Level Radioactive Waste Disposal (LLRW) Program

Kentucky's LLRW program consists of oversight at one facility; the Maxey Flats site (Site), which is located in eastern Kentucky. The Program stated during the periodic meeting that they were having difficulty maintaining a regulatory posture at the Site.

The Site operated a commercial LLRW disposal facility from May 1963 through December 1977. The site was added to the National Priorities list in 1986, a record of decision was issued in 1991, and a consent decree was entered in 1995. The consent decree in Section I Part C states "Pursuant to the requirements of the AEA, the Site is owned by the Commonwealth of Kentucky ("Commonwealth"). The Commonwealth, through the Cabinet for Human Resources, exercises regulatory authority over the Site pursuant to its status as an "Agreement State" under the AEA and the Kentucky Cabinet for Natural Resources and Environmental Protection is the current licensee of the Site."<sup>1</sup> The site is currently in the Final Closure Period.

The Program maintains a license for the Site which is issued to the Kentucky Energy and Environment Cabinet. The license for this site authorizes possession and activities associated with maintenance related to the closed LLRW disposal site. It is important to note that the Cabinet for Health and Family Services is designated as the radiation control agency for the Commonwealth of Kentucky in Kentucky Revised Statute (KRS) 211.842. KRS 211.842 goes on further to state "(2) The Cabinet for Health and Family Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. (3) The Cabinet for Health and Family Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. (4) The cabinet or its duly authorized representative may enter at a reasonable time upon the property of a licensee, registrant, or other person where sources of ionizing, nonionizing, or electronic product radiation are reasonably believed to be located for the purpose of determining whether or not such licensee, registrant, or other person is in compliance with or in violation of the provisions of KRS 211.842 to 211.852 and administrative regulations promulgated hereunder, and the owner, occupant, or person in charge of the property shall permit entry and inspection; provided, that entry into areas under the jurisdiction of an agency of the federal government or its duly designated representative shall be only upon permission of the agency or its representative." KRS 211.846 then states "The Cabinet for Health and Family Services shall monitor radioactive waste material sites in Kentucky for the protection of the public health, safety, and welfare. The Finance and Administration Cabinet and the Cabinet for Health and Family Services shall cooperate and coordinate their activities in the leasing, regulation, monitoring, and control of radioactive waste material burial sites." The Program, per KRS and as delegated by the Cabinet for Health and Family Services, has the lead for licensing activities for this Site as well as determining whether or not the licensee is in compliance with or in violation of the KRS and administrative regulations promulgated as a result of the KRS. The Program is continuing to work on bringing about a resolution regarding the potential regulatory issues associated with this Site.

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<sup>1</sup> The Cabinet for Human Resources is now known as the Cabinet for Health and Family Services and the Cabinet for Natural Resources and Environmental Protection is now known as the Energy and Environment Cabinet.

**CONCLUSIONS:**

The Program continues to be an effective and well maintained Agreement State program. Since the last IMPEP three new technical staff members have joined the Program filling the two vacancies noted at the time of the last IMPEP review and the one created by the departure of a current staff member in July 2013. The Program has no inspections of priority 1, 2, and 3 overdue by more than 25 percent of their inspection due date and has completed one initial inspection overdue since the last IMPEP review. The Program has a minimal licensing backlog and has six regulations overdue for adoption. The Program has taken action to complete the one open recommendation from the 2012 IMPEP review. Based on the above, NRC staff recommends that the Kentucky Agreement State Program be removed from monitoring and that the next IMPEP review be conducted as scheduled in June 2016.

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR  
MAINE DIVISION OF ENVIRONMENTAL HEALTH  
RADIATION CONTROL PROGRAM

DATE OF MEETING: June 3, 2014

<b>Nuclear Regulatory Commission (NRC) Attendees</b>	<b>Maine Division of Environmental Health Attendees</b>
Monica Ford, RSAO, Region I	Jay Hyland, Manager
James Clifford, Division Director, Region I	Jean Geslin, Radioactive Materials Inspector
Joe O'Hara, Project Manager, Office of Federal and State Materials and Environmental Management Programs (FSME)	Tom Hillman, Radioactive Materials Inspector

**DISCUSSION:**

During the May 2011 Integrated Materials Performance Evaluation Program (IMPEP) review of the Maine Agreement State Program (the Program), the review team found the State's performance satisfactory for all performance indicators reviewed. The review team made three recommendations. On July 21, 2011, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Program. The MRB determined that Maine's performance for the indicator Technical Staffing and Training was satisfactory but needs improvement and all other indicators were found to be satisfactory. The MRB found the Program adequate to protect public health and safety and compatible with the NRC's program. Based on the results of the IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in four years and that a periodic meeting be held in approximately two years.

A periodic meeting was held with the Program on June 4, 2013. Subsequent to the periodic meeting the MRB met on July 9, 2013 to consider the findings of the periodic meeting. The MRB directed that the Program be placed on monitoring, that the Program submit a program improvement plan (PIP), that quarterly calls be conducted between the NRC and the Program, that a periodic meeting be held in one year, and that the IMPEP be conducted as scheduled in fiscal year 2015. The Program submitted a PIP on October 28, 2013 (ML13302C098) and submitted an updated PIP on February 20, 2014 (ML14051A451).

**TOPICS COVERED DURING THE MEETING INCLUDED:**

**Program Strengths**

The Program noted two strengths. The Program is fully staffed with two fully qualified inspectors. The Program's staff has extensive knowledge in radiation protection.

Program Weaknesses

The program manager stated that the Program's weakness is a law that was passed in 2009 which became effective March 1, 2014. This law required properties that were leased for more than 100 days to be tested for radon. The amount of work brought on by this law is prohibiting the Program from cross training another employee, who is currently in the radon program, to help with licensing and inspection activities.

Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program also expressed its appreciation for the NRC training classes. Last, the program manager discussed Maine's appreciation for the IMPEP process.

Agreement State Program Staffing and Training

At the time of the June 2013 periodic meeting the Program had one staff vacancy. Since that periodic meeting the vacancy has been eliminated from the Program's staffing plan. The Program currently consists of two technical staff positions and a program manager and is considered fully staffed with approximately 2.4 full time equivalents (FTE). The program manager and both technical staff are fully qualified license reviewers and inspectors.

Support for staff training exists in the Program. Maine has been utilizing NRC's training courses to support the qualifications of the technical staff. One of the inspectors has also accompanied a New Hampshire inspector to gain additional inspection experience.

The 2011 IMPEP had one recommendation in this indicator. The recommendation and status are below.

**Recommendation 1:** The review team recommends that the State develop and implement a strategy to address current and future staffing vacancies in order to maintain the effectiveness and efficiency of the Program.

**Status:** During the June 2013 periodic meeting, the program manager stated that in order to address the recommendation, the Program's original plan was to move the staff member over from the State's low level radioactive waste program to the radioactive materials program when the individual returned from military duty in order to try and address this recommendation. This staff member was moved to the program in September 2011. The program manager stated that by doing this, the hope was to increase the Program's FTE from 2.4 to 3.2 when the vacant staff position left unfilled by the hiring freeze was finally able to be filled. The Program was able to fill that vacant position in June 2012 and increase the Program's FTE to 3.2. However, the unexpected departure of a staff member in September 2012 has caused the Program to return to 2.4 FTE. The vacant position created by the September 2012 retirement has since been removed from the Program's staffing plan and the Program is considered fully staffed with approximately 2.4 FTE. Per the Program's PIP the goal is to maintain two inspectors to support the program. The Program has also created a staff development plan to cross train additional radiation control program staff to help support licensing and inspection activities in the Program and hopes to send one of the staff to the inspection procedures course scheduled for October

2014. This will help the Program in their cross training efforts.

### Organization

The Program is located in the Radiation Control Program which is located in the Division of Environmental Health in the Center for Disease Control and Prevention under the Department for Health and Human Services.

### Program Budget/Funding

The Program is 100 percent fee funded. Maine increased its fees in 2010 and now charges 50 percent of NRC fees from 2009. This increase was put into place to help pay off a deficit that occurred in the Program. The deficit has since been resolved and the Program's budget is currently in the positive. The funds are placed into a dedicated fund for the Radioactive Materials Program. Although the money is placed into a dedicated fund money can be taken out of the fund by one of three ways: 1) stacap, which is a 3.45% tax that is assessed monthly on the account and goes into the general fund, 2) dicap, which allows the Maine Department of Health and Human Services to take money out of the account every month based on FTE, it amounts to approximately \$8,000.00 per FTE per year, and 3) a change in legislation, which is rare.

### Licensing and Inspection Programs

The Program currently has approximately 110 specific licenses. The Program completed 50 licensing actions in calendar year 2013 and so far has completed 45 licensing actions in calendar year 2014. The increase in licensing action for calendar year 2014 is due to an increase of license renewals coming due this year. The technical staff has signature authority for all types of licensing actions. All completed licensing actions undergo a peer or managerial review before being signed and issued. The Program currently has a backlog of six licensing actions. The longest action, which is a renewal, has been with the Program since February 2014.

All of the Program's inspection frequencies are performed at the same frequency as the NRC's. The Program's licensees are composed largely of Priority 5 licensees and less than half of the licensees fall into the Priority 1, 2, and 3 categories.

During the June 2013 periodic meeting the Program reported that it had 14 overdue Priority 1, 2, and 3 inspections by more than 25 percent of the inspection frequency since the last IMPEP review. The program manager stated that it was decided that the Program would take a hit in the area of overdue inspections in order to allow the two technical staff to become fully qualified inspectors. At the time of this periodic meeting both technical staff are fully qualified inspectors and the Program has no inspections overdue by more than 25 percent of their assigned inspection frequency. The Program has not had any initial inspections since the last periodic meeting since no new licenses have been issued.

In calendar year 2014 the Program has received 10 reciprocity requests, of which, eight have actually come in to the State to perform work. The Program has completed inspections on two of the eight reciprocity licensees.



The 2011 IMPEP review generated one recommendation in this indicator. The recommendation and its status are below.

**Recommendation 2:** The review team recommends that annual supervisor accompaniments be performed for each radioactive materials staff member to ensure quality and consistency within the program.

**Status:** The program manager stated and recorded on the PIP that both annual supervisory accompaniments for calendar year 2013 had been completed. The program manager also stated that he has already completed one supervisory accompaniment for 2014. The other supervisory accompaniment is expected to be completed by the end of July 2014.

#### Regulations and Legislative Changes

The Program is designated as the State's radiation control agency. No legislation affecting the Program was passed since the last IMPEP review and the Program is not subject to sunset requirements.

The Maine Regulations for Control of Radiation, found in Maine Administrative Rules 10-144A CMR 220, apply to all ionizing radiation. Maine requires a license for possession and use of all radioactive material, including naturally occurring materials, and accelerator produced radionuclides. Maine also requires registration of all equipment designed to produce X-rays or other ionizing radiation.

At the time of the periodic meeting, there were no NRC amendments overdue for adoption. However, it was noted by the May 2011 IMPEP review team that the final published rules submitted for NRC review in March 2010 generated 22 NRC comments. The review team made a recommendation based on this finding. The recommendation and its status are listed below.

**Recommendation 3:** The review team recommends that the State expedite action to address the comments identified in NRC letters dated August 31, 2006, and June 18, 2010, to promulgate and complete changes to the State regulations.

**Status:** The Program manager stated that the comments made by the NRC in its letters dated August 31, 2006 and June 18, 2010 have been addressed in a draft rulemaking. The Program is in the process of seeking approval from the Governor's office to start rulemaking proceedings. Once approval is received, there is a 150 day window for the Program to solicit for and address public comments. The Program plans to allow for a 30 day public comment period. The Program will also send the rules to NRC for review. The Program hopes to have the rules through final adoption by the end of calendar year 2014. Once these rules become final the Program will start working on a time frame to adopt other regulatory changes required for compatibility.

#### Event Reporting

The Program has had two reportable events and several non-reportable events since the 2011 IMPEP review. Both reportable events have been reported to the NRC accordingly. The Program stated that all staff is aware of event reporting criteria.

Response to Incidents and Allegations

The Program is aware of the need to maintain an effective response to incidents and allegations. When notified of an incident, the radioactive materials staff in the Program will be assigned to investigate and document the incident and determine if the event requires a call to the NRC Headquarters Operations Center. The inspector is responsible for recording the event in the Nuclear Materials Events Database (NMED) local incident database and transferring updates to the NRC's contractor responsible for maintaining NMED.

Since the last IMPEP review, the Program has received no allegations. The Program stated that when they do receive an allegation they are able to protect the alleged's identity. When asked if there was a procedure available for handling of allegations, the program manager stated that the procedure had not been looked at since the last IMPEP review and would work on updating it before the IMPEP review scheduled in June 2015.

Sealed Source and Device Evaluation (SS&D)

At the time of the May 2011 IMPEP review, no SS&D certificates had been issued by the Program and there were no manufacturers of SS&Ds in the State. Accordingly, the IMPEP team did not review this indicator. During the June 2013 periodic meeting the program manger stated that a manufacturer and distributor (M&D) had located itself in Maine and had submitted an SS&D sheet for approval to the Program on May 31, 2013. The program manager stated that the New England States have signed the New England Radiological Health Compact so the Program is able to utilize expertise in another State to help perform the SS&D review and approval. The Program used experienced staff in Massachusetts to perform the SS&D review. The Program issued the completed SS&D registration sheet in November 2013. The Program plans to work on qualifying technical staff as time allows so that they will be able to perform SS&D reviews in the future.

**CONCLUSIONS:**

The Maine Agreement State Program has shown improved performance since the June 2013 periodic meeting. Since the last IMPEP two new technical staff members have joined the Program and both are now fully qualified license reviewers and inspectors. The Program has no inspections of priority 1, 2, and 3 overdue by more than 25 percent of their inspection due date. Additionally, the Program has a minimal licensing backlog and has no regulations overdue for adoption. The Program has taken the feedback received at the June 2013 periodic meeting and has successfully corrected the issues that were found at that time. Based on the above, NRC staff recommends that the Maine Agreement State Program be removed from monitoring and that the next IMPEP review of the Maine Agreement State Program be conducted as scheduled in June 2015.

**Agenda for Management Review Board Meeting  
September 23, 2014 1:00 p.m. – 4:00 p.m. ET, T-2B5**

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, NRC staff members, State representatives, and other participants.
3. Discussion of IMPEP Periodic Meetings:
  - a. Tennessee Department of Environment and Conservation  
(April 17, 2014) – ML14155A438 – Janda/ Beardsley
  - b. Kentucky Cabinet of Health & Family Services  
(July 9, 2014) – ML – Ford/ Clifford/ White
  - c. Maine Center for Disease Control and Prevention  
(June 3, 2014) – ML14182A780 – Ford/ Clifford/ O'Hara
4. Adjournment

Invitees:

Roy Zimmerman, DEDMRT  
Bradley Jones, OGC  
Brian Holian, FSME  
Kriss Kennedy, Region IV  
Julia Schmidt, NE, OAS  
Donna Janda, RI/RSOA  
Monica Ford, RI/RSOA  
Matthew McKinley, KY  
Debra Shults, TN  
Jay Highland, ME

Laura Dudes, FSME  
Susan Abraham, FSME  
Duncan White, FSME  
Lisa Dimmick, FSME  
Karen Meyer, FSME  
Michelle Beardsley, FSME  
Jack Foster, OEDO  
Dan Collins, RI