



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 16, 1996

Mark B. Horton, M.D., M.S.P.H.
Director
Nebraska Department of Health
301 Centennial Mall South
P.O. Box 95007
Lincoln, NE 68509-5007

Dear Dr. Horton:

The Nuclear Regulatory Commission (NRC) is implementing, on an interim basis, the Integrated Materials Performance Evaluation Program (IMPEP) to be used in the evaluation of Agreement State Programs beginning in fiscal year 1996. Enclosed for your review is the draft IMPEP report which documents the results of the Agreement State review held in your offices on July 15-19, 1996. Patricia Larkins, Project Manager, Office of State Programs was the team leader for the Nebraska review. The review team's recommendations were discussed with members of your staff on July 19, 1996.

NRC has significantly changed the manner in which periodic reviews are conducted for Agreement State programs to assure that public health and safety is adequately protected from the hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's program. The new process, titled IMPEP, employs a team of NRC and Agreement State staff to assess both Agreement State and NRC Regional office radioactive materials licensing and inspection programs. All reviews use common criteria in the assessment and place primary emphasis on performance. Four additional areas have been identified as non-common indicators and are also addressed in the assessment. The final determination of adequacy and compatibility of each Agreement State program, based on the review team's report, will be made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager who serves as a liaison to the MRB.

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the draft review team report for review prior to submitting the report to the MRB. Your review of the draft report should focus on factual correctness of information reported by the team. I am asking that you provide your response to me within two weeks of receipt of this letter. Please note that we have received your letter of August 6, 1996, informing us that you have completed review and issuance of the 22 outstanding enforcement letters prepared as a result of contractor inspections. We have also received your letter of September 10, 1996, providing a schedule of completion for the overdue inspections, notification of delegation of signature authority to the Radioactive Materials Program manager, and the current status of draft regulations. SP011/

I direct your attention to Section 5.0 of the report, which provides a summary of the review team's findings and recommendation regarding the Nebraska program. As noted in that Section, the review team found the State's performance with respect to each of the

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performance indicators to be satisfactory with recommendations for improvement, with two exceptions. The team found the State's performance unsatisfactory in Section 3.2, Technical Staffing and Training, due to continued difficulties in maintaining adequate staffing, and Section 4.1.2, Status and Compatibility of Regulations, since the program did not adopt regulations equivalent to 10 CFR Part 36 by July 1, 1996, or equivalent legally binding requirements within the specified period of time.

The team observed that the State experienced difficulties identified during the review period including: (1) a backlog of 9 core inspections; (2) 22 inspections pending supervisory review and notification of the findings to the licensee; (3) inspection reports were incomplete; (4) a backlog of 101 licensing actions; (5) no incident reporting to NRC since June 1995; (6) incomplete documentation of incident response and response to allegations; (7) regulations required for compatibility not adopted in timely fashion; and (8) no "get-well" plan. The team concluded that the primary root causes for the deficiencies found in the program were directly attributable to (1) the need for management improvement to effectively assess and respond to the reduced level of performance in the Agreement State program, and (2) lack of current, written, program procedures or failure of staff to follow these procedures.

The review team plans to recommend that the Management Review Board find the Nebraska program adequate to protect public health and safety, but needs improvement, and not compatible with NRC's regulations. Due to the significance and number of deficiencies found in the Nebraska program that included unsatisfactory in two performance indicators, and the associated finding of not compatible, the team also plans to recommend a period of probation for the Nebraska program for a time period to be mutually established through consultation with you.

Please recognize that the findings of the review team, including the proposed period of probation, are recommendations of the review team based on their review and are subject to review and approval by the Management Review Board. If the Management Review Board affirms the team's recommendations, the proposed probation action would also be subject to review and approval by the Commission. The Management Review Board will take into consideration any additional information provided during discussion with your staff as well as any actions taken by the program to address the team's findings, such as those identified in the August 6 and September 10, 1996 letters referenced above.

I would also like to identify the major steps which would be taken relative to the proposed probation recommendation. If the Management Review Board affirms the review team's probation recommendation, the Chair of the Management Review Board, together with other MRB representatives will request to meet with you, and other program management, to review and discuss the program review results and State actions to address areas of improvement. Based on that meeting, and if the MRB continues to believe probation is necessary, the Commission will be informed of the proposed probation finding and State actions for their review and approval. If approved by the Commission, a letter from the Chairman to the Governor on the findings will be dispatched along with issuance of a public announcement and publication of a Federal Register notice on the probation action. At the same time, we will request that you develop a "Corrective Action Management Plan" to address outstanding areas needing improvement and we will monitor your actions

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to implement that plan. Following the probation period, a review of your program will be scheduled to affirm the effectiveness of implemented improvements. We would expect that review to occur within one year, or sooner, after initiation of the probation period.

Finally, please note that in Section 4.1.2 of the report, the review team identified a possible incompatibility in Section 012 of the Nebraska regulations. The regulations, as written, apply the public dose limits in 180 NAC 1-012.22 (equivalent to 10 CFR 61.41) to facilities that process or store low-level radioactive waste. Under NRC regulations, such facilities would only be subject to the public dose limits in 10 CFR Part 20. The team is interpreting the States's application of this rule to waste storage and treatment facilities as a radiation protection standard. As discussed in Section 4.1.2, we ask that you include in your response to this letter an interpretation by legal staff as to whether the State considers the limits to be a radiation protection standard or whether they are intended as an ALARA goal or design objective when applied to storage and treatment facilities. If they are intended as an ALARA goal or design objective, the team requests that Nebraska provide an appropriate legal analysis that supports the interpretation. Agreement States have greater flexibility to implement a goal or objective than a radiation protection standard without affecting compatibility under the Agreement.

As discussed above, we request your comments on the factual correctness of the report within two weeks of receipt of this letter. The team will review the response, make any necessary changes to the report and issue it to the MRB as a proposed final report. We will inform you of the date for the MRB review of the Nebraska report and will provide invitational travel for you or your designee to attend. If the Nebraska program takes additional actions to address the review team's findings and recommendations, as identified in your August 6 and September 10, 1996 letters, we would appreciate your keeping us informed of those actions and you may wish to review those actions at the MRB meeting.

If you have any questions regarding the enclosed report, please contact me at (301) 415-3340 or Patricia Larkins at (301) 415-2309.

Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs

Enclosure:
As stated

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Sincerely, *Original Signed By*
RICHARD L. BANGART
 Richard L. Bangart, Director
 Office of State Programs

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Richard L. Bangart, Director
Office of State Programs

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