



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

PARKWAY CENTRAL PLAZA BUILDING
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

20 MAY 1985

Denise D. Fort, Director
Environmental Improvement Division
Department of Health and Environment
P. O. Box 968
Santa Fe, New Mexico 87504-0968

Dear Ms. Fort:

This confirms the discussion R. J. Doda held with you and Messrs. Holland and Hargis of your staff on April 11, 1985, following our review of the New Mexico radiation control program. The review covered the principal administrative and technical aspects of the program. This included an examination of the program's legislation and regulations, organization, management and administration, personnel, and licensing and compliance activities.

Our review used as a reference the NRC "Guidelines for NRC Review of Agreement State Radiation Control Programs," published in the Federal Register on December 4, 1981, as an NRC Policy Statement. The Guidelines contain 30 indicators for program evaluation. A description of how the indicators are used in reporting the results of the program review to State management is enclosed (Enclosure 1).

Our review of the State's program and the routine exchange of information program between the Nuclear Regulatory Commission (NRC) and the State of New Mexico disclosed problems in three Category I indicators. We believe that improvements in these particular program areas should be made promptly and we would appreciate a response from you as to the type of action taken. As noted in our attached comments, the Bureau's staff began corrective action on two of the Category I comments during the review meeting in Santa Fe (during the week of April 8, 1985).

In addition, there are three comments listed in the attachments to this letter which relate to Category II indicators and one minor comment relating to a Category I indicator (I.C, Enclosure 2). Our review disclosed that most other program indicators were within NRC guidelines. A number of other technical matters were discussed with the radiation control staff during the course of the review meeting.

In view of the significant findings with Category I indicators, we cannot offer a staff opinion on the adequacy and compatibility of the program until we have received and evaluated your responses to our comments and recommendations.

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One subject area we would like to call to your attention is the implementation of the requirements of EPA's 40 CFR 192 regulations as they relate to ground water. We noted during our review that all the uranium mills have discharge plans approved by the Division. We believe any review of these discharge plans should include an examination of the ground water monitoring programs in light of the requirements of 40 CFR 192.

We also believe it is important to mention a program area where the Division has performed in an exemplary fashion during the review period. The Division's staff responded in a very timely and responsible manner to the contaminated rebar incident in early 1984. The positive response to this incident, which required the expenditure of significant staff efforts, was of primary importance to the containment and recovery of contaminated materials.

Enclosed with this letter are the comments regarding the technical aspects of the program (Enclosures 2 and 3). You may wish to have Mr. Hargis respond directly to these comments. I am also enclosing a copy of this letter for placement in the State Public Document Room or to otherwise be made available for public review.

I appreciate the courtesy and cooperation you and your staff extended to our representative during the program review meeting.

Sincerely,



Robert D. Martin
Regional Administrator

Enclosures:
As stated

cc w/enclosures:
R. Holland, Environmental Improvement Division
K. Hargis, Radiation Protection Bureau
G. Wayne Kerr, Office of State Programs, NRC
State Public Document Room
NRC Public Document Room

Enclosure 1

Application of "Guidelines for NRC Review of Agreement State Radiation Control Programs"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs," were published in the Federal Register on December 4, 1981, as an NRC Policy Statement. The Guide provides 30 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into 2 categories.

Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in several Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e., those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety. If at least one significant Category I comment is provided, the State will be notified that the program deficiency may seriously affect the State's ability to protect the public health and safety and should be addressed on a priority basis. When more than one significant Category I comment is provided, the State will be notified that the need of improvement in the particular program areas is critical. The NRC would request an immediate response, and may perform a followup review of the program within six months. If the State program has not improved or if additional deficiencies have developed, the NRC may institute proceedings to suspend or revoke all or part of the Agreement. Category II comments would concern functions and activities which support the State program and therefore would not be critical to the State's ability to protect the public. The State will be asked to respond to these comments and the State's actions will be evaluated during the next regular program review.

Enclosure 2

Technical Comments and Recommendations on the New Mexico Radioactive Materials Program (Not including the uranium mill program)

I. Compliance

A. Status of Inspection Program (Category I Indicator)

Comment

Our review disclosed that 20 licenses in Inspection Priorities 1, 2, and 3 were overdue by more than 50 percent of their inspection frequency. We are aware, in this regard, that the Bureau has placed the more significant licenses in a position to be inspected first on the schedule of inspections. We would also like to recognize that the Bureau has completed substantially more inspections this review period (81) than the previous review period (55). Nonetheless, we believe additional attention to this matter is needed.

Recommendation

We recommend that management establish a short-term action plan over the next several months to deal with this backlog. Such a plan should include goals, set milestones, establish priorities, and provide progress reports to management. We note that the Bureau had already begun the formulation of such a plan during the review meeting in Santa Fe during the week of April 8, 1985.

B. Inspection Frequency (Category I Indicator)

Comment

The Bureau's inspection priority system is based upon the inspection frequencies contained in an inspection policy sheet entitled, "Schedule of Inspections." These inspection priorities do not always provide for initial inspections and minimum intervals for reinspections that are consistent with those of NRC. The NRC inspection priority system is contained in IE Manual Chapter 2800, copies of which were furnished to the program on August 16, 1983 and May 7, 1984. (A recent revision to the Chapter is presently being distributed to the Agreement States; the changes, however, will not affect this comment.) We wish to note that the Bureau's staff began the necessary changes to the schedule of inspections during the review meeting and estimated a very small impact with respect to the number of inspections that would be moved up in the list of inspections due.

Recommendation

We recommend that the Bureau modify its inspection priority system so that categories of licensees receive initial and routine inspections at intervals at least as frequent as under the NRC system.

C. Enforcement Procedures (Category I Indicator)

Comment

A minor comment was noted for this Category I indicator. The Bureau has not been acknowledging licensee responses to enforcement letters for both radioactive materials and uranium mill inspections. Without some form of acknowledgement, licensees may not always know that their corrective actions for violations listed in the enforcement letters are acceptable to the State or that these corrective actions will be reviewed during the next scheduled inspection. This is a minor comment since only this one part of the Bureau's overall enforcement procedures is not being performed at the present time.

Recommendation

We recommend that the Bureau consider and develop some means of acknowledging licensee responses to enforcement letters so that the licensee becomes fully aware of the acceptability of any necessary corrective actions which he proposes.

D. Inspection Procedures (Category II Indicator)

Comment

Our review disclosed that certain inspection policies were not available to the technical staff in written form. This is of increased concern during periods of high staff turnover, such as recently experienced by the New Mexico radiation control program.

Recommendation

We recommend that written inspection policies be established for: (1) conducting unannounced inspections; (2) obtaining corrective action; (3) following up and closing out previous violations; (4) assuring exit interviews with management; and (5) issuing appropriate notification of violations of health and safety problems.

II. Legislation and Regulations

A. Updating of Regulations (Category II Indicator)

Comment

The review of the State's radiation control regulations disclosed that three regulatory amendments, which are matters of compatibility, have not been adopted by the State within a 3 year period after adoption by the NRC. These amendments are: (1) addition of Am-241 to exemption for survey instrument calibration sources; (2) radiation protection survey requirement (10 CFR Part 20.201(b)); and (3) clarification of exemption for uranium shielding in shipping containers.

Recommendation

We recommend these three amendments, and any others approaching the 3 year period allowed after NRC adoption, be promulgated as effective State radiation control regulations.

III. Personnel

A. Staff Continuity (Category II Indicator)

Comment

We found the turnover of technical staff within New Mexico's radiation control program amounted to 7 persons during the review period. Staff turnover for the previous review in 1983 was 6 persons. For a program of this size, turnover of this magnitude presents difficulties in training new staff members and in maintaining program continuity. While a variety of reasons are given for this turnover, low salaries appear to be one contributor. A somewhat unique situation exists in the State. Since few industrial positions are available for radiological health specialists, the State must compete with the significantly higher salary scales of the National Labs in New Mexico. As a matter of information only, some States have been successful at increasing salary scales for radiological health specialists through the reclassification of these position descriptions.

Recommendation

Since this is the second review period in which significant staff turnover has been experienced by the New Mexico radiation control program, we recommend the Division monitor closely the reasons for this turnover and attempt to minimize any future turnover of technical staff wherever possible.

Enclosure 3

Technical Comments and Recommendations on the New Mexico Uranium Mill Program

I. Compliance

A. Status of Inspection Program (Category I Indicator)

Comment

Environmental dose assessments for uranium milling facilities should be conducted annually to determine compliance with EPA 40 CFR 190 criteria. The review disclosed that the Bureau utilizes MILDOS predictive model calculations as well as actual measurement data, but only performs a dose assessment upon license renewal. This assessment should also be made for mills in shutdown or standby status, even though it may be less comprehensive.

Recommendation

We recommend that annual dose assessments be made by the Bureau to determine compliance with 40 CFR 190. This is a repeat recommendation from the previous review.