

AUG 15 1985

Barbara J. Sabol, Secretary  
Department of Health and Environment  
Forbes Field, Building 740  
Topeka, Kansas 66620

Dear Ms. Sabol:

This confirms the discussions Mr. Robert J. Doda held with you and your staff on July 26, 1985, following our review of the Kansas 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. A field accompaniment of a State inspector was scheduled and conducted during the review meeting also.

Our review used as a reference the Nuclear Regulatory Commission's (NRC) "Guidelines for NRC Review of Agreement State Radiation Control Programs," which was 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).

As a result of our review of the State's program and the routine exchange of information between the NRC and the State of Kansas, the staff believes that the Kansas program for the regulation of agreement materials is adequate to protect public health and safety. However, due to the lack of up-to-date radiation control regulations, we are unable to make a finding at this time that the Kansas program is compatible with the Commission's program for the regulation of similar materials. Our review disclosed a significant problem in one program area relating to a Category I indicator, "Status of Regulations." I wish to add that I am particularly concerned with those elements of your regulations that require modification to be compatible with our 10 CFR Part 71 regulations on transportation and have remained beyond the 3-year guideline.

The lack of up-to-date regulations is a serious concern that has been expressed on numerous occasions during past program reviews, as well as during Mr. Doda's meeting with you and Dr. Abramson on July 26, 1985, in Topeka. We are not satisfied with the progress Kansas has made in updating its radiation control regulations. The regulations are in need of revision to make them compatible

*John R. Hoyer*  
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with NRC regulations. The revision process has been going on for at least four years with no endpoint evident. We believe completion of the revision requires constant management attention. We would appreciate receiving an action plan for accomplishing this task. Further details regarding this comment are contained in Enclosure 2.

Our review disclosed that most other program indicators were within NRC guidelines. However, several technical comments were developed during the course of the review, and were discussed in detail with the radiation control staff (Enclosure 2). You may wish to have Mr. Romano respond directly to these comments. I am enclosing a copy of this letter for placement in the State Public Document Room or to otherwise be made available for public review.

We also wish to highlight the excellent assistance that the Bureau provided to the NRC in a recent case of an imported product (refrigerator deodorizer) that contained unauthorized quantities of radioactive material. The Bureau staff cooperated fully with Region IV to evaluate the case and to eventually remove this product from commercial distribution.

I appreciate the courtesy and cooperation you and your staff extended to Mr. Doda during the review meeting.

Sincerely,

ORIGINAL SIGNED BY  
ROBERT D. MARTIN

Robert D. Martin  
Regional Administrator

Enclosures:  
As stated

cc w/encls:

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## 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 For The Kansas Radiation Control Program

#### I. Legislation and Regulations

- A. Status of Regulations (Category I indicator) The following comment and recommendation is of major significance.

1. Comment

The Kansas Radiation Protection Regulations (KRPR), at this time, are not compatible with those of the NRC. Unadopted regulations relating to nine separate matters of compatibility were found to be beyond the 3-year period allowed for Agreement States to amend their regulations after being promulgated as effective regulations by the NRC. Even with some progress being made (the Department published Part 4 of the KRPR as effective regulations in December 1984), the above compatibility discrepancies represent a serious problem the Department has had for several years in amending the KRPR and in bringing these regulations up to date.

The Kansas regulations were last totally revised and published on May 1, 1976. The NRC has recommended that Kansas revise and update its regulations to include compatibility items after each of the three previous program reviews (December 1981, March 1983, and February 1984). After the December 1981 program review, the NRC provided assistance to the Kansas program by providing all necessary regulation changes recodified in the format of the Kansas regulations. The Department was unable, even with this recodification, to complete State procedures for the promulgation of these regulations.

Due to the seriousness of the outdated Kansas regulations, the NRC Regional Administrator met with Ms. Barbara J. Sabol, Secretary of the Department of Health and Environment, on November 29, 1983, to discuss ways of resolving this problem. NRC legal assistance was offered to the Department at that time in an attempt to accelerate the process. Nonetheless, the first actual progress regarding compatibility matters did not come until Part 4 of the KRPR became effective in December 1984. Now, Part 3 of the KRPR needs to be promulgated as effective regulations before all the regulations that are matters of compatibility have been properly addressed.

Recommendation

We urge the Department, to provide constant management attention to revising the State's radiation control regulations so that they are updated as expeditiously as possible and become compatible with NRC's regulations. Also, we recommend that, since the revision process is complex, the State develop a more



continuous process in the future. Due to the lengthy process involved to amend the rules and regulations and since NRC allows 3 years from the time NRC has amended its regulations, the State, in the future, should begin its adoption process as soon as practicable to assure that the State's regulations do not become out of date.

## II. Personnel

### A. Staff Continuity (Category II indicator)

#### 1. Comment

At the time of the program review, the Bureau had two vacancies in the Agreement materials program, which had resulted from two recent resignations. Both staff members had worked full time in the Agreement materials program, in both licensing and compliance activities. This matter was discussed at some length during the summary meeting on July 26, 1985, at the close of our program review, particularly because of the fact that a third Bureau staff member was terminating his State employment on exactly that date. According to Department plans, the two earlier vacancy positions were actively being filled as soon as possible, while the third had not yet been addressed since it had just occurred.

#### Recommendation

We recommend the Department monitor closely the reasons for this turnover and attempt to minimize any future turnover of technical staff, wherever possible. Since this turnover in professional staff represents such a significant impact on the Agreement materials program, we intend to follow closely the Department's progress in replacing these technical staff members. We offered full support to the Bureau in giving priority to any newly hired staff members to attend NRC-sponsored training courses.

## III. Licensing

### A. Licensing Procedures (Category II indicator)

#### 1. Comment

During the review of selected license files, it was noted that there were several licensees, based out of State, that did not maintain an office in Kansas. We also noted the Department's policy of extending reciprocity privileges for an unlimited period during the year, which is not consistent with normal NRC practice. The Department's practice has been to issue a license, with certain stipulations, to a firm at an out-of-State

home office address. This presents problems in completing inspection requirements, since certain records would be retained only at the licensee's out-of-State home office. We believe that, under normal operating procedures, it is more prudent to either require all licensees to have an in-State office or to operate within the State under normal reciprocity provisions.

Recommendation

Therefore, we recommend that, prior to license renewal, the State consider other alternatives for completing inspection requirements, or request that these out-of-State licensees either establish an office in Kansas or request that their license be terminated and normal reciprocity privileges be extended for operations in Kansas.

IV. Compliance

- A. Inspection Frequency (Category I indicator) The following comment and recommendation is of minor significance.

1. Comment

During the review of the Bureau's policy (RHS-7) regarding inspection frequencies for various categories of licensees, we found two cases where these frequencies are less restrictive than the NRC's inspection frequencies. These two cases were for initial inspections of new licensees and for routine inspections of teletherapy licensees. The NRC inspection priority system is contained in IE Manual Chapter 2800, copies of which were furnished to the Kansas program on August 16, 1984, and again on April 10, 1985.

Recommendation

Therefore, we recommend that the Kansas program modify its inspection priority system so that all categories of licensees receive initial and routine inspections at intervals at least as frequent as under the NRC system. Teletherapy licensees should have a routine inspection frequency of no greater than 3 years and initial inspections of new licensees should occur within 6 months or 1 year after radioactive materials are received and operations under the license have begun, depending on their priority.