

NOV 13 1985

Robert M. Wentz, M.D.
State Health Officer
North Dakota State Department of Health
State Capitol Building
Bismarck, North Dakota 58501

Dear Dr. Wentz:

This confirms the discussions Mr. Robert J. Doda held with you and your staff on October 25, 1985, following our review of the North Dakota 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. The Department's response efforts for radiation control during the recent truck/train accident involving uranium concentrates were also examined during this review.

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 North Dakota, the staff believes that the North Dakota program for the regulation of agreement materials is adequate to protect public health and safety and is compatible with the Commission's program for the regulation of similar materials. With respect to the truck/train accident involving uranium concentrates, we found the Department's actions to be timely and complete. Excellent management control was demonstrated in responding to the incident and during the recovery and clean up phase.

Our review disclosed that most program indicators were within NRC guidelines. Several comments were developed during the course of the review, and were discussed in detail with the radiation control staff and resolved before the end of the review. Enclosed with this letter is one specific comment regarding a technical aspect of the program (Enclosure 2). You may wish to have Mr. Mount respond directly to this comment. 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.

During the review, particular emphasis was placed on the current status of the Division's management and supervisory controls over license review procedures and inspection activities. We believe the Division's methods for providing supervisory review of these functions produce both adequate and sound licensing documents and inspection reports. On the subject of out-of-state licensees, as

re: Doda/oa
RIV:C:S&GAS
RJDoda/vlg
10/14/85

SP
Gwkerr
11/1/85

RA
RDMartin
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discussed during the closeout meeting, we support the State's current policy of requiring licensees to either have an office within the State or, if not, to operate within the State under normal reciprocity procedures. We expect to follow the implementation of this policy during the next year.

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:

Mr. Dana Mount, Director
Division of Environmental Engineering
North Dakota Department of Health

Mr. G. E. Christianson, Chief, Environmental Health
North Dakota Department of Health

G. W. Kerr, OSP-NRC
NRC Public Document Room
State Public Document Room

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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 North Dakota Radiation Control Program

I. Compliance

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

1. Comment

During the review of the Division's compliance procedures, it was found that written State procedures were not available for categorizing the seriousness of violations of State requirements. We also noted that the State has well defined escalated enforcement procedures and has used these procedures in several cases during the review period. In one recent case the State has referred to the NRC's Enforcement Policy for guidance on the seriousness of violations in order to determine an appropriate civil penalty.

Recommendation

We believe this is a minor comment and recommendation since the Division has not had any difficulty in applying varying degrees of enforcement actions and has referred to NRC guidance, as just noted. However, for purposes of uniformity and consistency, we recommend that the State develop written procedures for categorizing the seriousness of violations. These would then be available to the staff for any future escalated enforcement activities.