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

January 28, 2009

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki

FROM: R. W. Borchardt ***/RA Martin Virgilio for/***
Executive Director for Operations

SUBJECT: ANNUAL REPORT OF AGREEMENT STATES' AND REGIONS' RADIOACTIVE MATERIALS PROGRAMS

The purpose of this memorandum is to provide the Commission with the status of the U.S. Nuclear Regulatory Commission (NRC) Regional and Agreement State radioactive materials programs. The June 30, 1997, Staff Requirements Memorandum (SRM) on SECY-97-054, "Final Recommendations on Policy Statements and Implementing Procedures for: 'Statement of Principles and Policy for the Agreement State Programs' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs,'" directed staff to provide the Commission annual status reports on the performance of Agreement State radioactive materials programs. This report also includes the NRC Regional radioactive materials programs because the Integrated Materials Performance Evaluation Program (IMPEP) is applied to both Agreement State and Regional programs.

NRC uses IMPEP to periodically review NRC Regional and Agreement State radioactive materials programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and to ensure that Agreement State programs are compatible with NRC's program. The frequency of IMPEP reviews for a particular program range from 1-4 years, based on the program's performance. All reviews are conducted in accordance with NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. IMPEP reviews are conducted by teams of NRC and Agreement State staff members. IMPEP teams use the established criteria in MD 5.6, guidance documents maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME), and skills and knowledge acquired at a day-and-a-half training program for IMPEP team members to effectively assess each program's adequacy to protect public health and safety and each Agreement State program's compatibility with NRC's program. NRC staff also conducts periodic meetings between IMPEP reviews. Periodic meetings were created to help NRC Headquarters, the NRC Regions, and the Agreement States remain knowledgeable of the status of each other's respective program.

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Enclosure 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of the end of Calendar Year (CY) 2008. Of the 35 Agreement State programs, 29 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arizona, Georgia, Kentucky, Oregon, Tennessee, and Texas have a program finding of "adequate to protect public health and safety, but needs improvement." Of the 35 Agreement State programs, 33 Agreement State programs have a program finding of "compatible with NRC's program." California and New York have a program finding of "not compatible with NRC's program." All Regional radioactive materials programs currently have a program finding of "adequate to protect public health and safety," as shown in Enclosure 2 of this report.

When programmatic weaknesses exist in an Agreement State program, NRC primarily uses two processes, Heightened Oversight and Monitoring, to ensure that an Agreement State program needing improvement is progressing toward re-establishing a fully satisfactory program without negatively impacting other parts of the program. Under Heightened Oversight, a State is required to develop a Program Improvement Plan (Plan) to address IMPEP findings and recommendations. The Plan is submitted to NRC for approval prior to implementation. A State on Heightened Oversight must also submit status reports prior to bimonthly conference calls conducted by NRC staff with State program managers and staff to discuss program status. For Monitoring, a State's managers and staff must participate in quarterly calls with NRC staff to discuss program status. The decision to put an Agreement State program on either Monitoring or Heightened Oversight is done at the direction of the Management Review Board (MRB). The results of all IMPEP reviews and periodic meetings are presented to the MRB for its deliberation of the findings. An Agreement State program can be placed on Heightened Oversight or Monitoring as a result of an IMPEP review or periodic meeting. Currently, three States are on Heightened Oversight and four States are on Monitoring. Discussions of each of the States on Heightened Oversight and Monitoring are provided in the corresponding sections below. Also provided is a discussion for each State that is not subject to Heightened Oversight or Monitoring but has a finding of "adequate, but needs improvement."

STATES ON HEIGHTENED OVERSIGHT

Arizona:
A routine IMPEP review of the Arizona Agreement State Program occurred March 10-14, 2008. The review team noted budget and staffing issues, which have caused other aspects of the program to decline. The review team identified a backlog of inspections and issues with the technical quality of certain regulatory products. This was a marked decline in performance from the 2006 IMPEP review. The MRB decided that a period of Heightened Oversight must be initiated to closely monitor the State's progress in restoring a fully satisfactory program. The MRB directed NRC staff to conduct a followup review with the State approximately 1 year after the 2008 review to assess the State's performance in addressing performance issues identified during the review. NRC staff continues to work with the State to develop an acceptable Plan. In lieu of conducting a followup review approximately 1 year after the 2008 review, several staff members, along with a representative of the Organization of Agreement States (OAS), will be dispatched to the Arizona program offices to assist in developing and implementing an effective Plan. The site visit is expected to take place in the February-March 2009 timeframe. The followup review will be rescheduled for a later date once an acceptable Plan is in place.

Arkansas:
The Arkansas Agreement State Program was placed on Heightened Oversight based on the findings from an August 28, 2007, periodic meeting. During the periodic meeting, NRC staff determined that performance weaknesses identified during the 2006 IMPEP review had not been resolved; specifically, Arkansas's loss of experienced staff allowed the backlog of licensing actions to persist and created a backlog of inspections. Bimonthly conference calls with the State to monitor the State's implementation of its Plan have revealed that the State is progressing in addressing the identified weaknesses; however, issues with retaining qualified staff persist. Recent calls have revealed that Arkansas has eliminated its backlog of "core" (Priority 1, 2, and 3 and initial) inspections and is on pace to eliminate the licensing backlog by fall 2009. A full IMPEP review of the Arkansas Agreement State Program is scheduled for October 19-23, 2009.

New York:
The New York Agreement State Program was found adequate and not compatible following the November 1-9, 2006, IMPEP review. Due to the number of overdue NRC amendments by the 3 State Agencies that comprise the New York Agreement State Program, the State continued on Heightened Oversight, as decided by the MRB during its February 8, 2007, meeting. Periodic meetings were held with each of the New York agencies that comprise the New York Agreement State Program during the period November 27-29, 2007, to assess the State's progress in addressing the overdue regulations. The MRB was apprised of the results of the periodic meetings with the New York agencies at its March 24, 2008, meeting. The State has made considerable progress in addressing the overdue regulations since the 2006 IMPEP review; but, because there are still a number of overdue regulations, the MRB decided that the State should continue on Heightened Oversight. NRC staff will hold periodic meetings with the 3 New York agencies in May 2009 to re-assess the status of the regulations. The next full IMPEP review of the New York Agreement State Program is scheduled for FY 2011.

STATES ON MONITORING

California:
At its June 23, 2008, meeting, the MRB removed the California Agreement State Program from Heightened Oversight status and placed the State on Monitoring, based on the findings from the March 31 – April 4, 2008, IMPEP review. The review team determined that the State exhibited marked improvements in the program during the review period. The State continued to struggle with adopting compatibility-required regulations in a timely manner due to the State's cumbersome regulation adoption process. Staff conducts conference calls with California managers and staff every 4 months to assess the State's progress in adopting the overdue and upcoming regulatory amendments. The next IMPEP review of the California Agreement State Program is scheduled for FY 2012. Staff will conduct a periodic meeting with the State in April 2009.

Georgia:
The Georgia Agreement State Program was placed on Monitoring as a result of the findings from the September 22-26, 2008, IMPEP review. The review team identified performance weaknesses in the areas of staffing and training, performance of inspections, and technical quality of regulatory products. At its December 4, 2008, meeting, the MRB agreed with the review team's recommendation to place the State on Monitoring. Staff will initiate quarterly calls

with Georgia managers and staff in March 2009. The next IMPEP review of the Georgia Agreement State Program will take place in FY 2012, with a periodic meeting in September 2009.

Kentucky:
The Kentucky Agreement State Program was originally placed on Monitoring following the October 19, 2005, MRB meeting to discuss the results of the periodic meeting held with representatives from the Commonwealth of Kentucky on July 14, 2005. A full IMPEP review of the Kentucky Agreement State Program took place July 28 – August 1, 2008. The review team noted marked improvements in the program; however, several performance weaknesses persisted that warranted continued oversight on NRC's part. The MRB agreed with the review team's recommendation to keep the Kentucky program on Monitoring during the October 28, 2008, meeting. Staff will continue quarterly conference calls with the State to evaluate the State's progress in addressing issues with training and qualification of staff and performance of inspections. The next IMPEP review of the Kentucky Agreement State Program will take place in FY 2012, with a periodic meeting in July 2009.

Oregon:
At its April 15, 2008, meeting, the MRB removed the Oregon Agreement State Program from Heightened Oversight status and placed the State on Monitoring, based on the findings from the January 28-31, 2008, IMPEP review. The review team found that the State made significant improvement in addressing the performance weaknesses identified during the 2006 IMPEP reviews, especially in the quality of licensing actions; however, persisting issues with documentation of inspections and incidents warranted a period of Monitoring. Staff holds quarterly conference calls with Oregon managers and staff to continue to track the State's progress in resolving the remaining performance issues. A full IMPEP review of the Oregon Agreement State Program is scheduled for August 2009.

STATES NOT SUBJECT TO ADDITIONAL REVIEW PROCESS

The Tennessee and Texas Agreement State Programs have an overall program finding of "adequate to protect public health and safety, but needs improvement;" however, neither of the programs are subject to additional review by the NRC.

Tennessee:
At the July 15, 2008, MRB meeting, the Tennessee Agreement State Program was found "adequate to protect public health and safety, but needs improvement" due to performance issues with staffing and training, timeliness of adoption of compatibility-required regulatory amendments, and quality of sealed source and device evaluations toward the beginning of the review period. Tennessee was able to resolve or had a plan in place to resolve the identified performance issues; therefore, the review team believed, and the MRB agreed, that the performance issues did not warrant additional oversight at this time. The next IMPEP review of the Tennessee Agreement State Program will take place in FY 2012, with a periodic meeting tentatively scheduled for April 2010.

Texas:
The Texas Agreement State Program was placed on Heightened Oversight as a result of a March 15, 2005, periodic meeting and was downgraded to Monitoring based on the results of

the followup review that occurred November 13-17, 2006. In May 2008, staff conducted a periodic meeting with the Texas Agreement State Program and found that the State had addressed the remaining performance issues and recommended to the MRB that the period of Monitoring be discontinued. The MRB agreed with staff's recommendation at its August 11, 2008, meeting. The next IMPEP review of the Texas Agreement State Program will take place in FY 2010.

TRENDING ANALYSIS

During FY 2008, several previously identified trends intensified. Staffing and budgeting issues continued to affect many Agreement State programs. In some cases, the staffing issues were causing performance declines in other program areas, such as timeliness of inspections, reporting of incidents, and timeliness of adoption of regulations. This year, IMPEP teams saw the staffing issues begin to affect the quality of regulatory products. IMPEP teams observed that, because of high staff turnover, some programs were authorizing staff members to work independently prior to receiving the requisite training and experience. In turn, the quality of certain regulatory products, such as licensing actions and inspection reports, suffered. All programs where this practice was observed are subject to additional oversight by NRC, so staff can maintain vigilance over the identified performance weaknesses. This adverse trend is being addressed by staff through the resumption of NRC's funding of training for licensing and inspection qualifications for Agreement State staff. NRC and the Agreement States are investigating new and novel approaches to training to ensure that Agreement State staff can be qualified in a timely manner. In addition, OAS and the Conference of Radiation Control Program Directors have started various States-helping-States projects. Staff expects results of these investments to show in the next year. IMPEP reviews have confirmed that all programs continue to put health and safety first and foremost and reprioritized their work to overcome staffing or budgeting issues to the best of their ability.

Enclosure 3 presents a summary of FY 2008 IMPEP report issuances against the 104-day goal. Enclosure 4 presents a current summary of activities related to States on Heightened Oversight or Monitoring.

CURRENT IMPEP INITIATIVES

In a dynamic regulatory environment, IMPEP must adapt to new regulatory changes to continue to effectively review NRC Regional and Agreement State radioactive materials programs. The paragraphs below detail some of the ongoing initiatives in IMPEP:

- Since its inception in 1994, the efficiency and effectiveness of IMPEP has been assessed; however, the assessments have not been at a defined periodicity. In the very near future, staff will begin designing a systematic method for the periodic assessment of IMPEP. The assessments will include reviews of the efficiency and effectiveness of the policies, procedures, and practices used to manage and conduct IMPEP reviews, including revisions to affected MDs and FSME procedures. The assessments will provide sufficient internal controls for management oversight of IMPEP, as recommended by Office of Management and Budget Circular A-123, "Management's Responsibility for Internal Controls."

- In response to concerns over the safety and security of radioactive materials, NRC, with the assistance of the Agreement States, implemented the Increased Controls, a series of additional security measures for radioactive materials in quantities of concern. In early 2006, staff developed a temporary instruction for IMPEP team members to provide guidance to the team members on how to review the implementation of the Increased Controls during IMPEP reviews. Early reviews focused on ensuring that the appropriate licensees were required to implement the Increased Controls per the established criteria and the performance of initial inspections to ensure compliance with the Increased Controls requirements. Current reviews focus on the sustained application and inspection of the Increased Controls.

- Following two Government Accountability Office investigations, NRC developed and subsequently revised the pre-licensing guidance. The pre-licensing guidance is used to determine the legitimacy of requests to possess and use radioactive materials. The pre-licensing guidance requires on-site visits prior to license issuance for all requests to possess and use radioactive materials from "unknown" applicants and applicants requesting materials in quantities of concern. IMPEP review teams evaluate each NRC Region's and Agreement State's application of the pre-licensing guidance to ensure consistent, nationwide application of the requirements of the pre-licensing guidance.

- NRC was granted authority to regulate certain naturally occurring and accelerator-produced radioactive materials (NARM) by the Energy Policy Act of 2005. Historically, State radiation control programs, including Agreement State programs, were the regulatory authorities for these materials. After November 30, 2007, IMPEP teams began reviewing each NRC Region's and each Agreement State's program as it relates to the regulation of NARM. IMPEP teams use existing performance indicators and the established criteria in MD 5.6 to evaluate a program's performance with respect to NARM.

- Given the current economic climate and the news of State budget deficits, NRC staff is closely monitoring the impact of budget shortfalls and budget cuts on State radioactive materials programs.

SUMMARY

Staff believes that NRC and the Agreement States are benefiting from a strong, healthy regulatory relationship. NRC and the Agreement States continue to work in cooperation to achieve the goals of the IMPEP program. Inclusion of the Agreement States in the IMPEP review process enables a productive exchange of information. NRC and the Agreement States both benefit from the IMPEP program's blending of State and Federal resources. In addition to the cooperation demonstrated through the IMPEP process, NRC and the Agreement States continue to work together on a number of issues. Staff continually seeks and receives Agreement State involvement in improving the nationwide protection of health, safety, security, and the environment. The Agreement States routinely contribute resources to NRC working groups on issues such as rulemaking, updating guidance, and revising policy. The Agreement

States have provided significant input, and will continue to play an instrumental role, to the Agency's actions in ensuring consistent, nationwide implementation of a program to prevent the malevolent use of radioactive materials while allowing the beneficial uses of radioactive materials to continue.

Enclosures:
1. Summary of Agreement States' Adequacy and Compatibility Statuses
2. Summary of NRC Regions' Adequacy Statuses
3. IMPEP Report Tracking
4. Heightened Oversight and Monitoring Chart

cc: SECY
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SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUS
(As of the end of Calendar Year 2008)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2006	adequate	compatible
Arizona	2008	adequate, but needs improvement	compatible
Arkansas	2006	adequate	compatible
California	2008	adequate	not compatible
Colorado	2006	adequate	compatible
Florida	2007	adequate	compatible
Georgia	2008	adequate, but needs improvement	compatible
Illinois	2006	adequate	compatible
Iowa	2007	adequate	compatible
Kansas	2006	adequate	compatible
Kentucky	2008	adequate, but needs improvement	compatible
Louisiana	2008	adequate	compatible
Maine	2007	adequate	compatible
Maryland	2007	adequate	compatible
Massachusetts	2006	adequate	compatible
Minnesota	2008	adequate	compatible
Mississippi	2005	adequate	compatible
Nebraska	2006	adequate	compatible
Nevada	2005	adequate	compatible
New Hampshire	2008	adequate	compatible
New Mexico	2005	adequate	compatible
New York	2007	adequate	not compatible
North Carolina	2004	adequate	compatible
North Dakota	2007	adequate	compatible
Ohio	2009	adequate[1]	compatible[1]
Oklahoma	2006	adequate	compatible

Enclosure 1

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Oregon	2008	adequate, but needs improvement	compatible
Pennsylvania	N/A	adequate[2]	compatible[2]
Rhode Island	2008	adequate	compatible
South Carolina	2007	adequate	compatible
Tennessee	2008	adequate, but needs improvement	compatible
Texas	2007	adequate, but needs improvement	compatible
Utah	2008	adequate	compatible
Washington	2008	adequate	compatible
Wisconsin	2005	adequate	compatible

[1] Findings are preliminary and are subject to Management Review Board approval.

[2] Findings are based on staff's assessment and Commission's approval of the State's application for Agreement State status.

SUMMARY OF NRC REGIONS' ADEQUACY STATUS
(As of the end of CY 2008)

REGION	REVIEW YEAR	ADEQUACY FINDING
Region I	2005	adequate
Region II	2006	adequate
Region III	2007	adequate
Region IV	2004	adequate

Enclosure 2

IMPEP REPORT TRACKING
FISCAL YEAR 2008

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
Minnesota	10/07	102
Rhode Island	10/07	104
Oregon (followup)	1/08	99
Arizona[1]	3/08	152
California	4/08	104
Tennessee	4/08	103
Washington	5/08	103
Louisiana	5/08	103
Utah (followup)	7/08	102
Kentucky[2]	8/08	108
New Hampshire	9/08	103
Georgia	9/08	94

[1] The Management Review Board (MRB) meeting was originally scheduled for June 3, 2008; however, due to an essential participant's personal emergency, the MRB meeting was rescheduled for July 21, 2008, resulting in the delayed issuance of the final report.

[2] The MRB meeting was scheduled after the target date to accommodate all essential participants' schedules, thereby affecting the issuance of the final report.

HEIGHTENED OVERSIGHT AND MONITORING CHART
(As of the end of Calendar Year 2008)

State	RSAO	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
HEIGHTENED OVERSIGHT					
Arizona	McLean	3/10-14/08	MRB 7/21/08	Bimonthly Call 1/09	1. Have not received an acceptable improvement plan. 2. Bimonthly calls. 3. Status Reports due 2 weeks prior to calls. 4. Next IMPEP FY 2009 (followup).
Arkansas	Erickson	8/28-9/1/06	Bimonthly Call 10/23/08	Bimonthly Call 1/22/09	1. Bimonthly calls. 2. Status Reports due 2 weeks prior to calls. 3. Next IMPEP FY 2010.
New York	Kottan	11/1-9/06	Quarterly Calls 9/18-29/08	Quarterly Call 1/09	1. Quarterly calls. 2. Status Reports due 2 weeks prior to calls. 3. Next IMPEP FY 2011.
MONITORING					
California	Erickson	3/31-4/4/08	Periodic Call 10/21/08	Periodic Call 2/17/09	1. Periodic calls (every 4 months). 2. Periodic meeting scheduled for 4/09. 3. Next IMPEP FY 2012.
Georgia	Kottan	9/22-26/08	MRB 12/4/08	Quarterly Call 3/09	1. Quarterly calls. 2. Periodic meeting scheduled for 9/09. 3. Next IMPEP FY 2012.
Kentucky	Kottan	7/28-8/1/08	MRB 10/28/08	Quarterly Call 1/09	1. Quarterly calls. 2. Periodic meeting scheduled for 7/09. 3. Next IMPEP FY 2012.
Oregon	McLean	1/28-31/08 (followup)	Quarterly Call 10/23/08	Quarterly Call 1/09	1. Quarterly calls. 2. Next IMPEP FY 2009.

Enclosure 4