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

January 29, 2010

MEMORANDUM TO: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki

FROM: Charles L. Miller, Director ***/RA/***
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: REPORT ON AGREEMENT STATES' AND NRC'S RADIOACTIVE MATERIALS PROGRAMS FOR CALENDAR YEAR 2009

Enclosed is the annual report to inform the Commission of the status of the U.S. Nuclear Regulatory Commission (NRC) and Agreement State radioactive materials programs, as required by the June 30, 1997, Staff Requirements Memorandum 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.'"

For future annual reports on the status of NRC's and Agreement States' radioactive materials programs, staff plans to issue the reports to the Commission by mid-March to insure continued comprehensive overview of the program for the entire calendar year.

Enclosure:
Report on Agreement States' and NRC's
Radioactive Materials Programs

cc: SECY
OGC
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OPA
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ANNUAL REPORT FOR U.S. NUCLEAR REGULATORY COMMISSION AND AGREEMENT STATE RADIOACTIVE MATERIALS PROGRAMS

CALENDAR YEAR 2009

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to periodically review NRC 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 2-day 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.

Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of publication of this report. Regarding the adequacy provision of Section 274b. of the Atomic Energy Act (the Act) of 1954, as amended, 30 of the 37 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arizona, Arkansas, Georgia, Kentucky, Oregon, Tennessee, and Texas have a program finding of "adequate to protect public health and safety, but needs improvement." Regarding the compatibility provision of Section 274b. of the Action, 35 of the 37 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 NRC radioactive materials programs currently have a program finding of "adequate to protect public health and safety," as shown in Attachment 2 of this report.

In order to provide timely feedback to programs under review, NRC has set a goal to issue a publicly available final report for each program reviewed within 104 days from the last day of the review. Attachment 3 presents NRC's performance for IMPEP report issuance against the 104-day goal for the reviews that took place in NRC Fiscal Year (FY) 2009.

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. 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. A summary of recent activities related to States on Heightened Oversight or Monitoring is presented in Attachment 4. 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 initiated a period of Heightened Oversight 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; however, the followup review was postponed because NRC did not receive an acceptable Plan prior to the review. Instead, two staff members were dispatched to Phoenix to give the program guidance on developing and implementing an acceptable Plan. The state subsequently submitted an acceptable program improvement plan. NRC has stayed in close contact with the program recently due to the State's lack of a budget during the first half of Arizona's FY 2010. At this time, the program has sufficient operating funds through Arizona's FY 2010, which ends on June 30, 2010. A followup IMPEP review has been scheduled for March 29 – April 2, 2010.

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. During the October 26-30, 2009, IMPEP review, the review team confirmed that the program eliminated the inspection backlog; however, the staffing issues continued to plague the program, thereby reducing the program's ability to reduce the license renewal backlog. At the time of the review, over 50 percent of the State's licenses were pending renewal. At the January 14, 2010, MRB meeting, the review team recommended, and the MRB agreed, that the Arkansas Agreement State Program was adequate to protect public health and safety, but needs improvement, and compatible with NRC's program. The review team also recommended, and the MRB agreed, that the program remain on Heightened Oversight and that a followup review be conducted in October 2010.

New York:
The New York Agreement State Program was found adequate to protect public health and safety and not compatible with NRC's program following the November 1-9, 2006, IMPEP review. Due to the number of overdue NRC amendments by the three State Agencies that compose 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 compose the New York Agreement State Program in July 2009 to assess the State's progress in addressing the overdue regulations. The State has implemented their program improvement plan and has made considerable progress in addressing the overdue regulations since the 2006 IMPEP review. Staff presented its findings from the July 2009 periodic meetings to the MRB on January 7, 2010. 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. Staff held a periodic meeting with California on April 29, 2009. Based on the discussions at the periodic meeting, staff recommended, and the MRB agreed, that the period of Monitoring of the California Agreement State Program should continue and that another periodic meeting should be held with the State in fall 2010. The next IMPEP review of the California Agreement State Program is scheduled for FY 2012.

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. Staff held a periodic meeting with Georgia on October 28, 2009. Staff noted improvements in Georgia's performance during the meeting; however, there had not been a sufficient period of sustained performance to warrant recommending that the program be taken off of Monitoring. Staff presented its findings from the periodic meeting to the MRB on January 7, 2010. The next IMPEP review of the Georgia Agreement State Program will take place in FY 2012, with another periodic meeting in spring 2011.

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, MRB meeting. Staff held a periodic meeting with the Commonwealth on September 15, 2009. During the meeting, staff noted improvement in program performance. Staff presented its findings from the periodic meeting to the MRB on January 7, 2010. The next IMPEP review of the Kentucky Agreement State Program will take place in FY 2012, with another periodic meeting in spring 2011.

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. During the August 24-27, 2009, IMPEP review, the review team found that the issues with inspections, licensing, and incident quality have continued. The review team recommended, and the MRB agreed, that the period of Monitoring of the Oregon Agreement State Program should continue. A full IMPEP review of the Oregon Agreement State Program will take place in FY 2012, with a periodic meeting in fall 2010.

STATES NOT SUBJECT TO ADDITIONAL REVIEW PROCESSES

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 Heightened Oversight or Monitoring.

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. A periodic meeting is scheduled for spring 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 is scheduled for February 22-26, 2010.

TRENDING ANALYSIS

During FY 2009, several previously identified trends continued. Due to the economic climate, budget issues continued to affect some Agreement State programs. Staff is closely monitoring the effects of budget shortfalls and budget cuts in these States. Budget issues have caused staffing issues, such as difficulty in recruitment and retention and hiring freezes. NRC issued a letter of support to one State (Mississippi) in Calendar Year 2009 to draw State management's attention to staffing retention issues that could potential affect the performance of the program in the future. NRC has also increased its programmatic expectations of the Agreement States via the National Source Tracking System (NSTS), the Increased Controls, and the fingerprinting and backgroup check requirements, which has created additional workload for the Agreement State programs' available resources. In most cases, the identified staffing issues only affected the timeliness of inspections, the reporting of incidents, and the timeliness of adoption of regulations. IMPEP reviews have confirmed that all programs continue to put health and safety first and foremost and reprioritized their workload to overcome staffing or budgeting issues to the best of their ability. IMPEP reviews have also confirmed that the Agreement States have quickly implemented high-priority programmatic changes, such as NSTS, the Increased Controls, and the pre-licensing guidance.

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:

- A self-assessment of IMPEP has been initiated in 2010. The self-assessment will include a review of Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, and will incorporate program enhancements. This self-assessment will also establish a mechanism to conduct ongoing self-assessments in the future.

- Staff has been actively reviewing and revising the Agency's procedures that govern the performance of IMPEP reviews to ensure that the procedures are up to date and reflect current practices. In 2009, staff issued three Office of Federal and State Materials and Environmental Management Programs (FSME) State Agreement (SA) Procedures and sent out nine FSME SA Procedures in draft for Agreement State review and comment.

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. During the past year, the NRC, Organization of Agreement States and Conference of Radiation Control Program Directors leadership have initiated semi-annual meetings to prioritize issues of mutual interest to ensure that appropriate attention and resources are applied. 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.

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of January 26, 2010)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2006	adequate	compatible
Arizona	2008	adequate, but needs improvement	compatible
Arkansas	2010	adequate, but needs improvement	compatible
California	2008	adequate	not compatible
Colorado	2006	adequate	compatible
Florida	2007	adequate	compatible
Georgia	2008	adequate, but needs improvement	compatible
Illinois	2009	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	2009	adequate	compatible
Nebraska	2006	adequate	compatible
Nevada	2009	adequate	compatible
New Hampshire	2008	adequate	compatible
New Jersey	N/A	adequate[1]	compatible[1]
New Mexico	2009	adequate	compatible
New York	2007	adequate	not compatible
North Carolina	2009	adequate	compatible
North Dakota	2007	adequate	compatible
Ohio	2009	adequate	compatible

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Oklahoma	2006	adequate	compatible
Oregon	2009	adequate, but needs improvement	compatible
Pennsylvania	2010	adequate	compatible
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
Virginia	N/A	adequate[1]	compatible[1]
Washington	2008	adequate	compatible
Wisconsin	2009	adequate	compatible

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

SUMMARY OF NRC PROGRAM'S ADEQUACY STATUSES
(As of January 26, 2010)

PROGRAM	FISCAL YEAR OF REVIEW	ADEQUACY FINDING
Region I	2005	adequate
Region II	2006	adequate
Region III	2007	adequate
Region IV	2009	adequate
Sealed Source and Device Evaluation Program	2010	adequate

Attachment 2

IMPEP REPORT TRACKING
FISCAL YEAR 2009

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
Ohio	10/08	87
North Carolina	2/09	95
NRC Region IV	3/09	97
Mississippi	4/09	101
Illinois	5/09	101
Nevada	6/09	103
Wisconsin[1]	7/09	106
New Mexico	7/09	99
Oregon	8/09	100

[1] A number of high priority documents requiring Office of Executive Director for Operations (OEDO) review and concurrence were in OEDO's queue before the Wisconsin report causing a slight delay in issuance.

HEIGHTENED OVERSIGHT AND MONITORING CHART
(As of January 26, 2010)

State	RSAO	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
HEIGHTENED OVERSIGHT					
Arizona	McLean	3/10-14/08	Bimonthly Call 1/14/10	IMPEP 3/29-4/2/10	1. Bimonthly calls. 3. Status Reports due 2 weeks prior to calls. 4. Next IMPEP: 3/29-4/2/10 (followup).
Arkansas	Erickson	10/26-30/09	MRB 1/14/10	Bimonthly Call 3/10	1. Bimonthly calls. 2. Status Reports due 2 weeks prior to calls. 3. Team recommending followup review in October 2010.
New York	Kottan	11/1-9/06	Special MRB 1/7/10	Bimonthly Call 3/10	1. Bimonthly 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 1/21/10	Periodic Call 5/10	1. Periodic calls (every 4 months). 2. Next IMPEP: FY 2012.
Georgia	Kottan	9/22-26/08	Special MRB 1/7/10	Quarterly Call 4/10	1. Quarterly calls. 2. Next IMPEP: FY 2012.
Kentucky	Kottan	7/28-8/1/08	Special MRB 1/7/10	Quarterly Call 4/10	1. Quarterly calls. 2. Next IMPEP: FY 2012.
Oregon	McLean	8/24-27/09	MRB 11/10/09	Quarterly Call 2/10	1. Quarterly calls. 2. Next IMPEP: FY 2012.

Attachment 4