



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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November 3, 2005

Paul K Halverson, DrPH, Director
Division of Health
Arkansas Dept. of Health and Human Services
P.O. Box 1437, Slot H-30
Little Rock, AR 72203-1437

Dear Dr. Halverson:

A periodic meeting with your Radioactive Materials Program staff was held on October 18, 2005. The purpose of this meeting was to review and discuss the status of Arkansas' Agreement State Program.

At the meeting, the NRC was represented by me from NRC's Region IV office, and Andrew Mauer from the Office of State and Tribal Programs. I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

If your staff feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail VHC@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
As stated

cc w/enclosure:
Bernie Bevill, Section Chief, Radiation Control Section
Jared Thompson, Program Manager, Radioactive Materials Program
Janet Schlueter, Director, STP

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ADAMS: Yes No Initials: vhc
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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR ARKANSAS

DATE OF MEETING: October 18, 2005

ATTENDEES:

State

Bernie Bevill, Section Chief, Radiation Control Section
Jared Thompson, Program Manager, Radioactive Materials Program
Kim Wiebeck, Health Physicist
Katia Gray, Health Physicist
Steve Mack, Health Physicist

NRC

Vivian Campbell, Regional State Agreements Officer, Region IV
Andrew Mauer, Office of State and Tribal Programs

DISCUSSION:

On August 12, 2005, Arkansas' Department of Human Services and Department of Health merged into the newly formed umbrella organization named the Department of Health and Human Services (the Department). The Department is now Arkansas' largest State agency with 10 major divisions, including the Division of Health (formerly the Department of Health). The Division of Health retained the function of the State's radiation control program. The Arkansas Agreement State program is administered by the Radioactive Materials Program (the Program). At the time of the meeting, the Program regulated 265 specific licenses authorizing Agreement materials.

The following is a summary of the meeting held in Little Rock, Arkansas, on October 18, 2005, between representatives of the NRC and the Department. During the meeting, the topics suggested in a letter dated May 17, 2005, from Ms. Campbell to Mr. Thompson were discussed. The discussion pertaining to each topic is summarized below.

1. Status of State's actions to address all open previous IMPEP review findings and/or open recommendations.

The previous Integrated Materials Performance Evaluation Program (IMPEP) review was conducted during the period September 9 - 13, 2002. This review identified three recommendations for evaluation and implementation. The status of the recommendations outlined in Section 5.0 of the final IMPEP report was discussed at the periodic meeting conducted January 22, 2004. The current status of the recommendations is summarized below.

- a. **Recommendation:** The team recommends that Department management review the current staffing plan to achieve a more effective balance between licensing and inspection activities (Section 3.3).

Current Status: At the 2004 periodic meeting, the Department informed the NRC staff that they had designated two staff as license reviewers, three staff as inspectors and were approved to use the services of a retired employee on a consultant basis during fiscal year 2004. During this meeting, Program management stated that they had significant staffing challenges since the 2004 periodic meeting.

The Program lost approval to use the consultant for fiscal year 2005. In January and February 2005, the Program lost two full-time health physicists, and in July 2005, lost the Agency Program Coordinator. The Program was able to fill the two health physicist vacancies (one in May 2005 and another in August 2005), and was recently approved to use the licensing consultant for one thousand hours in fiscal year 2006. Currently, the Program has only two qualified health physicists (not including the manager), two health physicists in training, and the licensing consultant to manage approximately 265 specific licensees. Program management anticipates that it will take approximately 18 - 24 months to train the new staff. In the meantime, the Program has deferred to NRC's inspection frequencies in order to keep up with the inspection workload, and has stopped work on the renewal backlog. It is recommended that this item be reviewed at the next IMPEP review.

- b. **Recommendation:** The review team recommends that Department management develop and implement an action plan to reduce the licensing renewal backlog (Section 3.4).

Current Status: The Department had implemented an action plan to reduce the renewal backlog, and was making progress when they had to abandon the plan because of the loss of personnel. From September 2002 through August 2004, the staff had issued 56 renewed licenses. Currently, the Program has 112 of the 265 specific licensees in timely renewal status. The Program is still able to complete reviews of amendment requests within a week. However, management stated that they are not able to meet their 30-day review goal for new applications.

Because of the status of the action plan at the time of the 2004 periodic meeting, the NRC staff had recommended that this recommendation be closed at the next IMPEP review. However, in view of the staffing changes which has impacted the Program's work on the renewal backlog, it is now recommended that this item be reviewed at the next IMPEP review.

- c. **Recommendation:** The review team recommends completion of revisions to update licensing guidance documents and checklists (this item was identified in the 1998 IMPEP review).

Current Status: Since the 2002 IMPEP, the Department has finalized licensing guidance for portable and fixed gauging devices. Program management has assigned the update of the industrial radiography guidance document to the consultant. When the radiography document is completed, updating the well logging guidance will become the next priority. It is recommended that this item

be reviewed at the next IMPEP review.

2. Strengths and/or weaknesses of the State program as identified by the State or NRC including identification of actions that could diminish weaknesses.

a. **Program Strengths:**

The remaining qualified staff are well trained, experienced and dedicated. The staff function as a team in training new staff and setting priorities for work to be accomplished. Because of this dedication, Arkansas was the first State to issue increased security controls to Groups I - IV. The Program has issued 23 amendments to the affected licensees. In view of the current staffing challenges, the Program is to be commended for this accomplishment.

b. **Program Weaknesses:**

Although the Program has some highly qualified staff, it does not have a sufficient number of qualified personnel. Department management assured the NRC staff that the Program had been able to adequately protect public health and safety even with the staffing challenges. However, management further indicated that if a significant radiation event occurred in the State, the Program may not have a sufficient number of staff to respond.

While training the new staff is a high priority for the Radioactive Materials Program, management expressed concerns that there may be delays in getting the staff to needed training courses due to training approval requirements in the new organization. The approval process now takes two months. Program management indicated that based on the timing of past notifications of acceptance into training classes, they may not have enough time to be approved to attend. Program management stated that a training plan has been developed for each employee. The NRC staff discussed the possibility of getting blanket approval for all newly hired staff which could potentially streamline the process.

Program management stated that the inspection program is becoming a weakness. During the 2002 IMPEP, the review team noted that except for Priority 1 licenses, all other Arkansas' licenses were inspected more frequently than the schedule specified in NRC's Manual Chapter (MC) 2800. Program management stated that because of the staffing challenges, the Program has extended their inspection intervals to NRC's intervals. Management stated that they currently do not have an inspection backlog because they have adopted NRC's schedule. However, the Program is currently operating on efficiencies gained when they were inspecting at an aggressive schedule. Program management believes they see a trend toward an inspection backlog.

The change in inspection frequencies is particularly significant when considering the licensing renewal backlog. During the 2002 IMPEP, the review team noted a significant licensing backlog. At the time, 121 of the 265 specific licenses were in a timely renewal status for more than one year. Fifty-seven of the 121 backlogged renewals were four or more years' old. Program management stated that resources

had been focused on inspections to ensure that potential health and safety issues resulting from the licensing backlog were identified and addressed. Based on this practice, the review team recommended, and the MRB agreed, that the technical quality of licensing actions be found satisfactory. The Program still has a significant licensing backlog and now they are not able to inspect licensees on the aggressive schedule. Consequently, potential health and safety issues may not be identified as promptly.

Department management stated that program funding continues to be a weakness. The Program is 60 percent funded by State General Revenue and 40 percent by license fees. There has been no increase in General Revenue and only one license fees increase in 1995 since license fee implementation in 1988. The Program requested authorization to increase license fees in 2003 and 2005, but was denied. Department management plans to again request a license fee increase in 2007.

3. Feedback on NRC's program as identified by the State and including identification of any action that should be considered by NRC:

Program management indicated that it would be very helpful in updating their licensing guidance documents if NRC would provide the NUREG 1556 series in WordPerfect or WORD format, rather than the PDF version. Management indicated that having a version that is readily useable would speed up the updating process.

Program management discussed the NMED database. In the past, the Program has found the database to be beneficial. However, they lost the staff that was responsible for keeping the NMED database up-to-date. The current staff are struggling because they are not familiar with the software. In addition, the program is available on only one computer station. Program management would like to explore the possibility of NRC providing onsite training to the staff and installing the software on the Program's server so that the entire staff could have access.

Program management also asked about the status of the increased control inspection procedures and requested that they be made available to the States as soon as possible.

4. Status of State Program including:

a. **Staffing and Training:**

- i) **Current staffing status:** The Program currently has two fully qualified staff who inspect licensed activities and review material license applications. They have two staff in training status, but management intends to interim certify the staff as they become qualified in specific Program areas. The Program also has one qualified consultant who assists in license application reviews and special projects such as writing licensing guidance. The use of the consultant must be reconsidered each fiscal year.

- ii) **Program vacancies:** The Program has two vacancies: 1) the Agency Program Coordinator who, in part, will be responsible for the State's General License Program, and 2) a health physicist position who will be an inspector/license reviewer. (When the Agency Program Coordinator was filled in 2003, the Health Physicist position that had been vacated was lost due to budget cuts. This position was recently re-instituted and is the current health physicist's vacancy.)
 - iii) **Staff turnover:** Since the 2004 periodic meeting, the Program has lost three full-time staff members: the Agency Program Coordinator and two health physicists.
 - iv) **Adequacy of FTE :** Program management stated that when fully staffed (an Agency Program Coordinator and five health physicists), the Program will have adequate FTE to implement the materials program.
- b. **Materials Inspection Program:** As discussed earlier, Program management stated that because of staffing challenges, they had extended their inspection intervals to the NRC schedule in MC 2800. The Program does not currently have an inspection backlog. However, they are operating on efficiencies gained when they were inspecting at an aggressive schedule. The two qualified staff are training the new staff and continuing to conduct as many inspections and license reviews as possible. No renewal applications are being reviewed by the staff. Consequently, the staffs' efficiencies and effectiveness have been significantly impacted. In calendar year 2004, the Program conducted 191 inspections. Thus far in calendar year 2005, the Program has conducted 91 inspections. At this current rate, Program management expects a backlog of inspections.
- c. **Regulations and Legislative Changes:** On June 10, 2005, STP received proposed changes (nine amendments) to the Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation. These regulations were reviewed by comparison to the equivalent NRC rules. As a result of the review, NRC identified five comments which were sent to you in a letter dated July 12, 2005. Department management expressed gratitude to STP's staff who conducted a timely review and worked with the State to resolve regulatory issues. When these regulations are finalized, the State will be current on their regulations.

The Program will need to address the following two regulations in upcoming rulemakings or by adopting alternate legally binding requirements:

- ! "Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments", 10 CFR Part 71 amendment (69 FR 3697), due by the State on 10/01/07, (RATS ID 2004-1)
 - ! "Medical Use of Byproduct Material- Recognition of Speciality Boards," 10 CFR Part 35 amendment (70 FR 16336), due by the State on 4/29/08, (RATS ID 2005-2).
- d. **Program reorganizations:** As discussed earlier in the summary, on August 12, 2005, the Department of Health and the Department of Human Services merged into an umbrella organization named the Department of Health and Human Services. Mr. John Sellig was appointed the Department Director. The Department consists of 10

divisions including the Division of Health, formerly the Department of Health. Dr. Fay Boozman was previously the State Medical Officer and director of the Department of Health. As a result of the Legislature authorizing and enacting the merger, the duties of the State Medical Officer were redefined. Dr. Joe Thompson was appointed the Chief Medical Officer which is similar to the role of the U.S. Surgeon General. Dr. Paul Halverson was appointed the Director of the Division of Health and assumed the administrative duties. The Division of Health is divided into four centers, including the Center for Health Protection, Donnie Smith, Director. The Center consists of five branches, including the Health Systems and Regulation Branch, Renee Mallory, Branch Chief. The Radiation Control Section, Bernie Beville, Section Chief, reports to the Health Systems and Regulations Branch. The Radioactive Materials Program, Jared Thompson, Program Manager, reports to the Radiation Control Section.

- e. **Changes in Program Budget/Funding:** The merger saved the State \$2.4 million, which was previously the Department of Health budget. The Department of Health and Human Services was able to absorb this loss of revenue without much of an impact. Department management assured the NRC staff that the Program is being adequately funded.

5. Event Reporting, including follow-up and closure information in NMED:

Prior to the periodic meeting, NRC staff queried the NMED database to identify the events reported by Arkansas since the last IMPEP. The staff identified 12 events reported of which 10 were determined to be reportable events. The events were generally reported timely and contained complete information. As discussed earlier, because of the loss of staff, Program management has requested training for the staff and assistance to install the NMED software on the Department's server.

6. Response to Incidents and Allegations:

Region IV referred one allegation since the 2004 periodic meeting. The investigation and followup were complete. The NRC asked Program management about the State's requirements for protecting the identity of the alleged. Program management emphasized that they are not able to protect an alleged's identity.

7. Status of the following Program areas:

- a. **Sealed Source & Device Program:** N/A
- b. **Uranium Mills Program:** N/A
- c. **Low-Level Waste Program:** N/A

8. Information exchange and discussion:

Program management discussed the oversight of the University of Arkansas' decommissioning projects and the impacts on the Program. The Legacy Waste Project involves the collection and characterization of waste that has been accumulated for 20 - 30 years. Phases I-III have been completed. All of the collected waste has been packaged and shipped for disposal, except a few packages awaiting DOE pickup. The

final phase (Phase IV) of the decommissioning project is in progress. During the characterization of the project, the University discovered that several rooms in the Chemistry Building and the old accelerator room required extensive decontamination. The University with their contractor is currently revising their work plan to address this final phase. The Program staff have been involved in the review of each phase of the project, including in process inspections and independent sampling to assess the radiation conditions at the facility.

The second project, which began this year, is the Harmon Road Project, a chemical and low level radioactive waste landfill used in the 1970s and 1980s. Actual excavation activities began in August and continued through mid-October. The University expected to find most of the material containerized in drums; however, they found that cells had been packed with loose material, or material in plastic bags. Program staff have been involved in the review of work plans and conducted in process inspections during cell excavation, as well as splitting samples with the licensee for analysis by the Department's laboratory. Program staff have been onsite during most of the cell excavation to verify that proper radiation safety procedures were followed.

Department and Program management discussed their mechanisms to evaluate Program performance. A report is generated on a monthly basis that provides the status of the licensing and inspection programs. The Program has instituted amendment tracking so that they can determine the amount of time spent on licensing actions. Program management assures that quality is maintained by conducting a second review of all licensing actions and inspection findings. The Program manager is conducting inspector accompaniments at least on an annual basis.

The NRC staff discussed the status of the implementation of the increased controls, the sensitive information screening project, and the implementation of the Energy Policy Act. The NRC staff identified that Arkansas was the first Agreement State to issue the increased controls to affected licensees, indicated that there would be opportunity to comment on inspection procedures in the near future, and provided the overall status of the nationwide implementation. The NRC staff also gave an overview of the sensitive information screening project and indicated that there would likely be final criteria distributed to the Agreement States in the near future, along with expectations for implementation. Finally, the NRC staff mentioned the implementation of the Energy Policy Act and provided examples of the different areas where the Agreement States would have a key role.

9. Schedule for the next IMPEP review:

The next IMPEP is tentatively scheduled for September 2006.