November 8, 2005

John A. Stephens, Commissioner
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3857

Dear Mr. Stephens:

On November 2, 2005, the Management Review Board (MRB) met to consider the proposed follow-up final Integrated Materials Performance Evaluation Program (IMPEP) report on the New Hampshire Agreement State Program. The MRB found the New Hampshire program adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. In addition, due to the program improvement shown since the 2004 IMPEP review, the period of heightened oversight status of the New Hampshire program will be discontinued.

Section 4.0, page 9, of the enclosed final report presents the IMPEP team's findings resulting from this follow-up review. I would like to acknowledge the many program improvements that have been implemented by the New Hampshire radiation control program to address our performance concerns noted in the 2004 IMPEP review. These actions demonstrate a high level of management support for the Agreement State program by the Department of Health and Human Services, and a commitment to operating a fully satisfactory program in the future.

Based on these results, the next full review will be in approximately three years. However, the MRB directed that periodic management meetings be conducted between the NRC and the New Hampshire program on an annual basis until the next IMPEP review. During these periodic meetings, we will evaluate the longevity of the program improvements noted during this review, as well as the implementation of your overall program.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review. I also wish to acknowledge your continued support for the Radiation Control Program and the excellence in program administration demonstrated by your staff, as reflected in the team's findings. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director for Materials, Research,
State and Compliance Programs
Office of the Executive Director for Operations

Enclosure: As stated

cc: See next page

cc: John Wallace, Associate Commissioner
Department of Health and Human Services

Mary Ann Cooney, Director
Division of Public Health Services

Alice Bruning, Administrator
Bureau of Prevention Service

Dennis O'Dowd, Chief
Radiological Health Bureau

Craig Jones, UT
OAS Liaison to the MRB

INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

FOLLOW -UP REVIEW OF NEW HAMPSHIRE AGREEMENT STATE PROGRAM

JULY 26-27, 2005

FINAL REPORT

U.S. Nuclear Regulatory Commission

1.0 INTRODUCTION

This report presents the results of the follow-up review of the New Hampshire radiation control program, conducted July 26-27, 2005. This follow-up review was directed by the Management Review Board (MRB) based on the results of the June 21-25, 2004 Integrated Materials Performance Evaluation Program (IMPEP) review. The MRB directed that a follow-up review of the Technical Staffing and Training and Compatibility Requirements indicators be conducted in approximately one year from the MRB meeting based on findings of satisfactory, but needs improvement and unsatisfactory for the aforementioned performance indicators. The follow-up review also included evaluation of the actions taken by New Hampshire to address the four recommendations made during the 2004 IMPEP review. Other aspects of the program not fully evaluated as part of the follow-up review, were discussed at a periodic meeting held in conjunction with the review. The summary of these discussions is in Appendix D.

A draft of this report was issued to New Hampshire for factual comment on August 26, 2005. The State responded by letter from Mary Ann Cooney on September 26, 2005. The MRB met on November 2, 2005 to consider the proposed final report. The MRB found the New Hampshire radiation control program adequate to protect public health and safety and compatible with NRC's program. In addition, the period of heightened oversight status of the New Hampshire program will be discontinued.

The follow-up review was conducted by a review team consisting of technical staff members from the Nuclear Regulatory Commission (NRC). Review team members are identified in Appendix A. The follow-up review was conducted in accordance with the February 26, 2004, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the follow-up review, which covered the period of June 26, 2004 to July 27, 2005, were discussed with New Hampshire management on July 27, 2005.

The New Hampshire Agreement State program is administered by the Radiological Health Section (the Section). The Section contains the Radioactive Materials, Radiation Machines and Emergency Response Groups. The Section is located within the Bureau of Preventive Services (the Bureau), Division of Public Health Services (the Division), Department of Health and Human Services (the Department). The Section also utilizes staff in the Public Health Laboratories Section for Agreement State activities. The Public Health Laboratories Section is in a separate Bureau but part of the same Division. The Department Commissioner is appointed by and reports to the Governor. Organization charts for the Department, Division and Section are included as Appendix B. At the time of the follow-up review, the New Hampshire Agreement State Program regulated approximately 80 specific licenses authorizing Agreement materials. The review focused on the regulatory program as it is carried out under the Section 274b (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New Hampshire.

Prior to the follow-up review, the New Hampshire program was on heightened oversight which included New Hampshire developing and submitting a Program Improvement Plan (Plan) in response to the 2004 IMPEP review, and bimonthly conference calls with the NRC to discuss New Hampshire’s progress in implementing the Plan. This period of heightened oversight was proceeded by a period of heightened oversight resulting from the 2001 IMPEP review. The Plan was submitted on November 15, 2004, and revisions to the Plan were submitted on January 5 and January 20, 2005. Conference calls were held November 23, 2004, January 25, 2005,

March 30, 2005, and June 14, 2005. The Plan and minutes from the calls can be found in Appendix C. New Hampshire's corrective actions associated with their Plan and the current status were reviewed in preparation for this follow-up review.

In preparation for the follow-up review, a questionnaire addressing the one common and one non-common performance indicators was sent to the Section on July 5, 2005. The Section provided responses to the questionnaire on July 26, 2005. A copy of the questionnaire responses can be found on NRC's Agency-wide Document Access and Management System using the Accession Number ML052270308.

The review team's general approach for conduct of this follow-up review consisted of: (1) examination of the heightened oversight information including status reports; (2) review of applicable New Hampshire statutes and regulations; (3) analysis of quantitative information from the Section's licensing and inspection data bases; (4) interviews with staff and management to answer questions or clarify issues. The review team evaluated the information gathered against the IMPEP performance criteria for the one common and one non-common performance indicators and made a preliminary assessment of the State's performance.

Section 2 discusses the results of the follow-up review of the New Hampshire program for the one common performance indicator. Section 3 below discusses the results of the follow-up review of the New Hampshire program for the one non-common performance indicator. Section 4 summarizes the follow-up review team's findings and recommendations. The general status of the other aspects of New Hampshire program addressed during periodic meeting discussions can be found in Appendix D.

2.0 COMMON PERFORMANCE INDICATORS

The follow-up review addressed one of the five common performance indicators used in reviewing both NRC Regional and Agreement State programs, Technical Staffing and Training.

2.1 Technical Staffing and Training

During the follow-up review, the review team evaluated actions taken by the Section in response to the finding of satisfactory but needs improvement made during the 2004 IMPEP review, as well as, the status of the staffing and training of the New Hampshire program.

Issues central to the evaluation of this indicator include the Section's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate these issues, the review team examined the Section's training program, interviewed Bureau management and staff, and reviewed job descriptions and training records. The review team also considered any possible workload backlogs.

The review team's evaluation of the New Hampshire program's response to the three recommendations from the 2004 IMPEP review is presented below.

Recommendation 1

The review team recommends that the Section continue to examine and change the business processes and organization of the Section to improve the effectiveness and efficiency of the program.

Current Status

A new Department reorganization went into effect on July 1, 2004. The Section is currently authorized for 12 positions under the new organization. These positions include the Section Administrator, Radioactive Materials Program Manager, Radiation Machine Program Manager, five Radiation Health Physicists (one position is for emergency response), Program Planner, and three administrative support staff.

Prior to August 2003, the Section had a radiochemistry laboratory and environmental monitoring program with three positions. This program was transferred to Public Health Laboratories Section within the Division. The Section funds most of one position (Laboratory Scientist III) that is used to support the Section's inspection and event response activities. The Section also uses this position as a development position for the Radiation Health Physicists positions. This position is currently vacant, but the position has been posted and the Division is in the process of interviewing candidates.

The Section Administrator position has been vacant since April 2002. On June 23, 2004, the Division received final approval for the salary upgrade and reclassification of the Section Administrator position to Radiation Health Physicist V. The position was posted nationally and the Department interviewed three individuals and made one offer which was subsequently declined. In March 2005, the Division submitted a formal request to the Division of Personnel (DOP) to the revise the minimum qualifications to widen the applicant pool. Upon the DOP approving the request, the Bureau posted the position with the revised qualifications. In late May 2005, the Radioactive Materials Program Manager was selected as the new Administrator and the appointment went into effect on June 3, 2005. Since the individual had already been acting in the Administrator position, the responsibilities of the Program Manager positions are still being performed by the same individual.

The Radiation Machine Program Manager retired in April 2004 and that position has remained vacant. With the promotion of the Radioactive Materials Program Manager, the Bureau requested that DOP reclassify both vacant Program Manager positions from Health Physicist II to Radiation Health Physicist IV. Once these positions are reclassified, Division and Bureau management indicated that they will move promptly to post the positions and fill them. If the positions are filled by individuals internally, the vacated positions will also be posted and filled. Bureau management did not have a timetable for the reclassification of the Program Manager positions, but indicated that reclassifying both positions at the same time should accelerate the process. Bureau and Section management indicated that the new Radiation Health Physicist series provides increased salary potential and an extended career ladder which should help with staff hiring and retention. With the implementation of the new fees system on July 1, 2003, all Section positions are fee supported and, as such, they are not subject to a Statewide hiring freeze.

In September 2004, the Records Control Clerk position was filled. This position is responsible for processing the simple renewals preparation of licensing documents and some preparation work for revisions of regulations.

A part-time Word Processing position was filled for approximately two months during the current review period, but the position is currently vacant. Bureau and Section management indicated that they plan to request that this position be converted to a full time position. This position will be used to work on the adoption of necessary regulations for the Section.

The Section's contracts with two individuals to support the Section's licensing and inspection activities expired on June 30, 2004. The contract for the individual providing licensing support was renewed at the end of May 2005. The contract for the individual providing inspection support is currently in the State approval process and expected to be approved in the next few months. Bureau management indicated that although the Section had successfully operated without contract support for eleven months, the contractors will provide backup to Section staff.

The Section reported that 2.3 FTE's were utilized for the Radioactive Materials Program which includes management time but excludes the effort for the radiological emergency response program and the contract support for the licensing and inspection program. During the 2004 fiscal year, the Section reported approximately 0.2 FTE contract support for the licensing and inspection program.

In the 2004 final IMPEP report, the review team concluded and the MRB agreed that until a permanent Section Administrator is hired and the Section has a period of satisfactory performance under the new organization without contract support, the program is still fragile and needs additional time to implement the new organization, complete new staff qualification and stabilize program performance with permanent staff. Since the last review, the Section has hired a new Section Administrator and operated for 11 months without contract support. During this period, the Section has completed all inspections in accordance with NRC Inspection Manual Chapter (MC) 2800, completed licensing actions in a timely manner, response to incidents, qualified additional staff to perform inspections and licensing reviews (see discussion below for details), qualified an individual to conduct sealed source and device (SS&D) reviews (see discussion below for details), hired additional administrative support and significantly reduced the number of overdue NRC amendments (see Section 3.1 for details). Since 2003, the Section stopped the practice of rotating staff on a routine basis between the Radioactive Materials and Radiation Machines programs and the Administrator and the senior Radiation Health Physicist assign work to the staff, as necessary, providing more flexibility.

As noted above, the Section has made significant progress with their organization and business processes since the 2004 review. The challenge in the coming months is for the Section to fill the Program Manager positions in a timely manner. The review team noted that Division, Bureau and Section management is committed to fill these positions. Since 2001 when the State was placed on heightened oversight and in addition to the bimonthly conference calls with NRC and State management, the Administrator and Regional NRC staff have found it beneficial to maintain routine communications (i.e., at least monthly) to discuss the status of the Section. Both the NRC Region and the Section plan to continue this practice indefinitely. Based on the progress made by the Section, the program stability demonstrated over the last year and continued management support, the review team recommended and the MRB concurred that this recommendation be closed.

Recommendation 3

The review team recommends that the Section establish a plan for new staff to promptly complete all training and qualification requirements in order to be qualified as independent license reviewers and inspectors.

Current Status

As noted in the 2003 follow-up IMPEP report, the Section finalized their training and qualification policy and supporting documentation following NRC MC 1246. At the time of the 2004 review, the two newest staff members hired in July and August 2003 respectively, had taken several of the required courses during the past year, but had limited case work and field time to support achieving qualifications as license reviewers and inspectors in the radioactive materials program. The staff member hired in 2002 conducted the majority of the inspections; however, there were several categories of license inspections that additional field work is required for full qualifications as an inspector. The individual had not yet received any qualifications as a license reviewer. The Section Administrator and the senior Radiation Health Physicist were fully qualified license reviewers and inspectors. All licensing actions in New Hampshire are signed by the Section Administrator or in his absence, the senior Radiation Health Physicist.

During this review, the review team examined training records and interviewed Section management and staff to determine the progress made toward achieving inspector and license reviewer qualification needed to support the Section's workload.

The staff member hired in 2002 is now fully qualified to independently inspect all materials licensees in the State. This individual has also reviewed a number of licensing actions of increased complexity. The two newest staff members are now qualified to independently inspect non-core sealed source licenses, which comprise over half of the total licenses issued by the Section. Both of these staff members have also reviewed a number of licensing actions of increased complexity. The Administrator indicated that the inspector qualification process will continue for both of the newest staff members.

With the limited number of licensees available in New Hampshire, the Section has used other Agreement State and Federal resources to provide on the job training to accelerate the qualification process for staff for conducting materials activities. For example, Section staff members have accompanied Region I, Massachusetts and Maine inspectors. The Section has also utilized Massachusetts' expertise in SS&D reviews to qualify one staff member.

The review team concluded that the Section is following its staffing and training policy to qualify new inspectors and license reviewers. The Section currently has two fully qualified inspectors and two partial qualified inspectors for approximately 80 licensees, of which 19 are Priority 1, 2, or 3. The review team concluded that this represents a sufficient number of inspectors for the Section's workload. The Section has four individuals to review licensing actions. Based on the average number of open licensing actions (20-30) in the Section, and that the senior Radiation Health Physicist spends a majority of time on licensing, the team concluded that the Section has

a sufficient number of individuals performing licensing. Finally, the review team concluded that the loss of a senior staff member or the Administrator would not prevent the Section from completing inspections or licensing actions. The review team recommended and the MRB concurred that this recommendation be closed.

Recommendation 4

The review team recommends that the Section modify their training and qualification program to include requirements for individuals to evaluate SS&D application and sign the registration sheet.

Current Status

The review team noted that the Section's training and qualification plan includes requirements for an individual to evaluate SS&D applications and sign the registry form. Since 1986, the Section has issued three SS&D registry sheets, the most recent in 2003 for a static elimination device. The review team concluded that the requirements in the training and qualification plan for an SS&D reviewer are commensurate with scope of the Section's SS&D activities. Currently, the State has one manufacturer with one registry sheet. There were no requests since the 2004 review to amend the registry sheet.

As noted in the 2004 final IMPEP report, the Section Administrator was the only individual in the Section to meet the minimum requirements for an SS&D reviewer. The Section implemented their SS&D training and qualification plan and qualified a second individual. The second individual qualified was the staff member hired in 2002 who is also a licensed metallurgical engineer. This individual participated in the State's review of the 2003 registry sheet, but also received training from the SS&D staff at the Commonwealth of Massachusetts in various registry applications. The review team noted documentation from the Commonwealth of Massachusetts that the Section staff member met the qualifications for an SS&D reviewer. The Section Administrator also indicated that the Section would likely request the Commonwealth of Massachusetts to assist in future reviews of SS&D applications.

With the modification of the Section's training and qualification program to include requirements for individuals to evaluate SS&D application and sign the registration sheets and the qualification of second individual, the review team recommended and the MRB concurred that this recommendation be closed.

The review team concluded that the New Hampshire program has made significant progress with their staffing and training since the 2001 IMPEP review which resulted in the program being placed on heightened oversight. The Section has a new fee system with a dedicated fund that provides fiscal stability; the Radiation Health Physicist series was expanded and salaries increased to enhance retention, promotional opportunities and recruitment; a permanent Administrator was appointed, the training and qualification plan for staff was finalized, the Section stopped the practice of rotating staff on a routine basis between the Radioactive Materials and Radiation Machines programs and work is now assigned to provide more flexibility and the Section has sufficient qualified staff to meet its licensing and inspection workloads. Since the 2004 review, the Section demonstrated stabile program performance through its ability to maintain routine operations and train new staff without contract support.

The remaining challenge for the program is the reclassification and filling the two vacant Program Manager positions. The Division and Bureau's management indicated their continued involvement with the Program and support to fill all remaining vacancies in the Section.

Based on the IMPEP evaluation criteria, the review team recommended and the MRB concurred that New Hampshire's performance with respect to the indicator, Technical Staffing and Training, be changed from satisfactory, but needs improvement to satisfactory.

3.0 NON-COMMON PERFORMANCE INDICATORS

The follow-up review addressed one of the non-common performance indicators used in reviewing NRC Regional and Agreement State programs, "Compatibility Requirements."

3.1 Compatibility Requirements

3.1.1 Legislation

The Department is authorized as the State's radiation control agency under the New Hampshire Revised Statutes Annotated (RSA) 1990, Chapter 125. The radiation control program is administered by the Section. The review team did not identify any legislative changes affecting the radiation control program since the last review.

3.1.2 Program Elements Required for Compatibility

The New Hampshire Rules for Control of Radiation are found in He-P 4000-4095 and apply to all ionizing radiation, whether emitted from radionuclides or devices. New Hampshire requires a license for possession, and use, of all radioactive materials.

The review team's evaluation of the New Hampshire response to the 2004 IMPEP review recommendation is presented below.

Recommendation 2

The review team recommends that the Bureau develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility.

Current Status

At the time of the June 21-25, 2004 IMPEP review, the State had twelve regulations overdue for adoption. The Section had been overdue in adopting regulations since the 2001 IMPEP review and the continued backlog in adopting regulations noted during the 2004 review was one factor that caused the program to remain on heightened oversight. Since the 2004 review the Section management, backed by support from the Bureau, has dedicated considerable staff time to bringing the State's rules up to date and compatible with NRC's rules. The Section's management indicated that this commitment will continue into the future and in addition has a

staffing plan to include a staff position dedicated to regulation development. Bureau and Section management indicated that they are preparing a proposal to upgrade a current part-time clerical position in the Section to a full time position that would assist the Section's professional staff member assigned to work on future regulation development.

At the time of the on-site review, the State had drafted rules to cover the twelve overdue regulations and one additional regulation that came due for State adoption following the 2004 IMPEP review. All rules had been submitted to the NRC for review and had been through a public comment period. There were five rules that have been promulgated in final and were effective in the State. Eight more rules were in proposed form waiting for legal approval in the State by the State's Joint Legislative Committee on Administrative Rules (JLCAR). The Section believed that they would be promulgated in final and effective within 60 days. The Section committed to submitting these rules into the NRC for review in their final form as required by the Office of State and Tribal Programs Procedure SA-201. The review team recommended and the MRB concurred that this recommendation be closed.

At the time of the on-site review, the following seven amendments were in proposed form and awaiting JLCAR approval in the State:

- "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," 10 CFR Parts 20, 30, 40, 61, 70 amendments (61 FR 24669) that became effective June 17, 1996.

- "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State," 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.

- "Deliberate Misconduct by Unlicensed Persons," 10 CFR Parts 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) was due for adoption on February 12, 2001.

- "Minor Corrections, Clarifying Changes, and a Minor Policy Change," 10 CFR Parts 20, 35, and 36 amendments (63 FR 39477; 63 FR 45393) that became effective October 26, 1998.

- "Respiratory Protection and Controls to Restrict Internal Exposures," 10 CFR Part 20 amendment (64 FR 54543; 64 FR 55524) that became effective February 2, 2000.

- "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material," 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162) that became effective February 16, 2001.

- "Revision to the Skin Dose Limit," 10 CFR Part 20 amendment (67 FR 16298) that became effective April 5, 2002.

During the MRB the State presented evidence that all of these rules had been approved by the JLCAR and were now effective.

The following amendments will become due during the next IMPEP review period and are included here to assist the Section in including them in future rulemakings or by adopting alternate generic legally binding requirements:

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, 35 (67 FR 20249) that is due for State adoption on November 24, 2005.

- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40, 70 (68 FR 57327) that is due for State adoption on December 3, 2006.

- "Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments," 10 CFR Part 71 amendment (69 FR 3697) that is due for State adoption on October 1, 2007.

Based on the information at the time of the on-site review, the review team initially recommended that the unsatisfactory rating from the 2004 IMPEP be changed to satisfactory, but needs improvement. Due to the information presented at the MRB by the State, in regard to the finalization of all overdue regulations, the review team recommended and the MRB concurred, that the unsatisfactory rating from the 2004 IMPEP be changed to satisfactory.

4.0 SUMMARY

The follow-up review team found New Hampshire's performance to be satisfactory for the indicators, Technical Staffing and Training and Compatibility Requirements. The review team noted that the Section has made significant progress since the last review and has shown continued commitment by the Division to support the Section in addressing deficiencies. Accordingly, the follow-up review team recommended and the MRB concurred in finding the New Hampshire Agreement State Program to be adequate to protect public health and safety and compatible with NRC's program. The review team recommended and the MRB concurred that the period of Heightened Oversight be discontinued. However, to ensure continued program success in the program, the review team recommended and the MRB concurred that a periodic management meeting be conducted on an annual basis until the next full IMPEP review. In addition, the MRB directed that a teleconference be conducted between the NRC and the New Hampshire program six months from the date of the MRB to monitor the progress on filling the remaining staff vacancies as well as overall program status. Based on the results of the follow-up IMPEP review, the next full review will be in approximately three years.

Based on the results of this review, there are no new recommendations and all recommendations from the 2004 IMPEP report are closed.

LIST OF APPENDICES AND ATTACHMENT

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

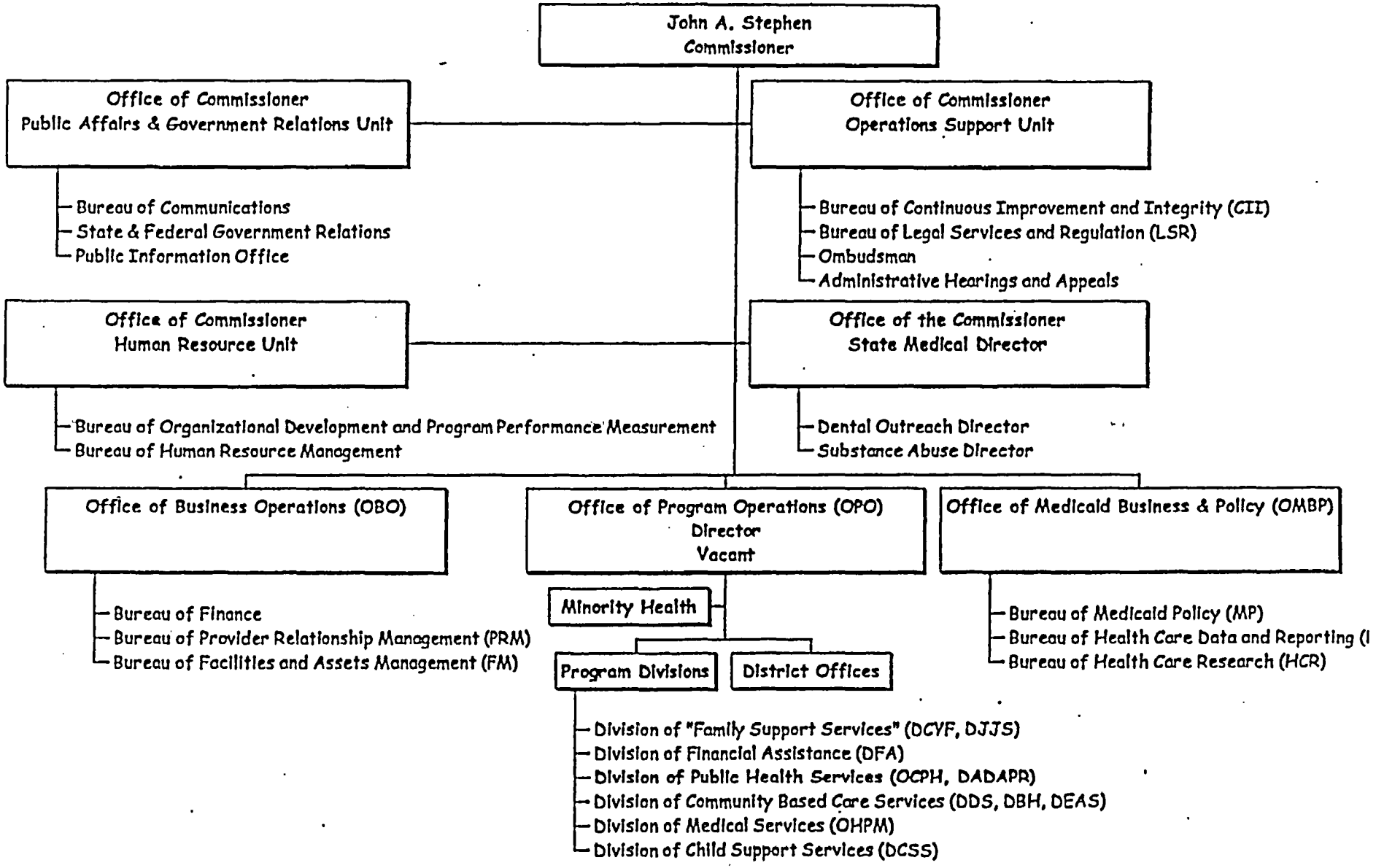
Name	**Area of Responsibility**
John Zabko, STP	Team Leader Compatibility Requirements
Duncan White, RI	Technical Staffing and Training Periodic Meeting

APPENDIX B

NEW HAMPSHIRE
ORGANIZATIONAL CHARTS

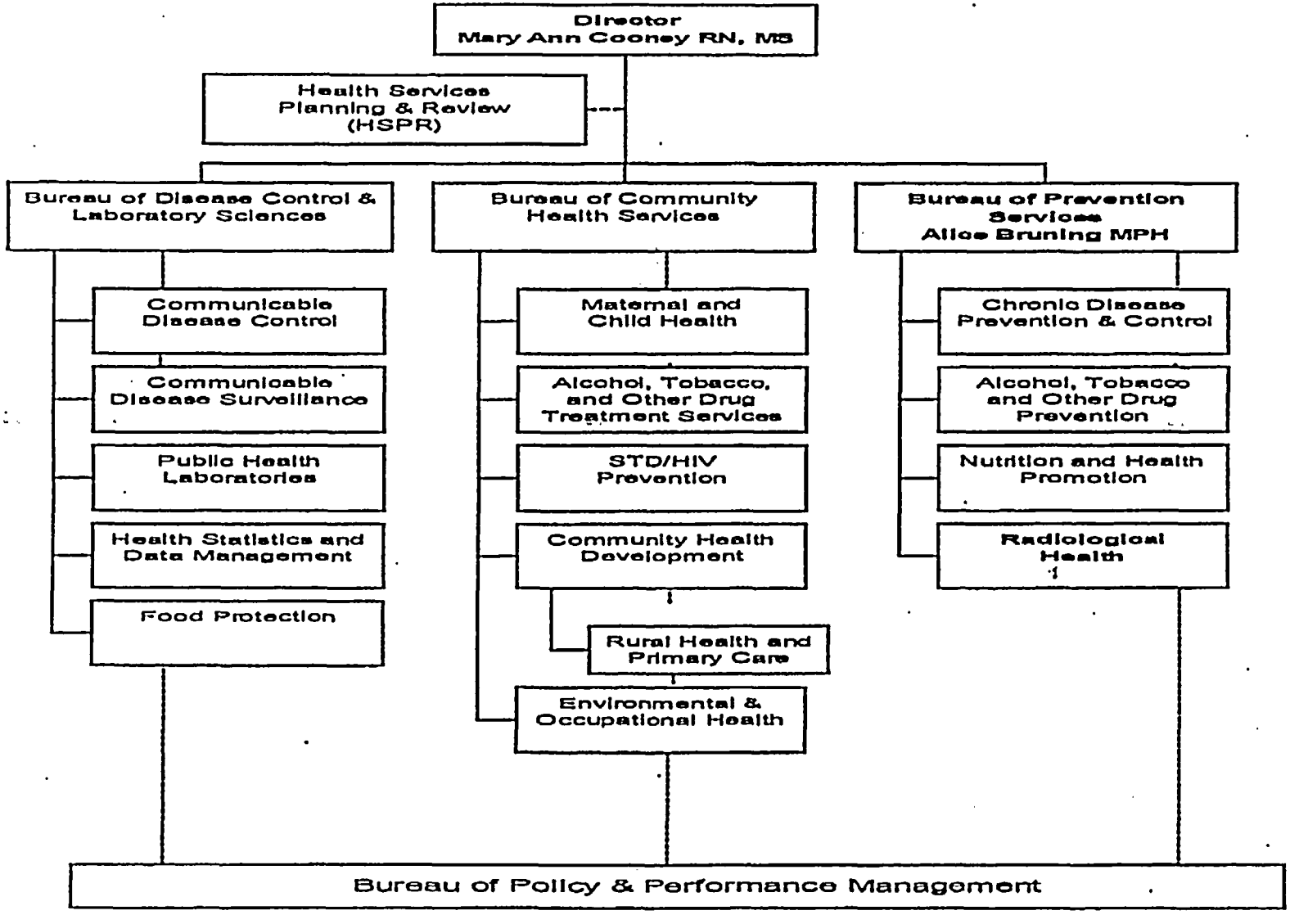
ADAMS: ML052270388

Department of Health and Human Services



Organizational Chart A

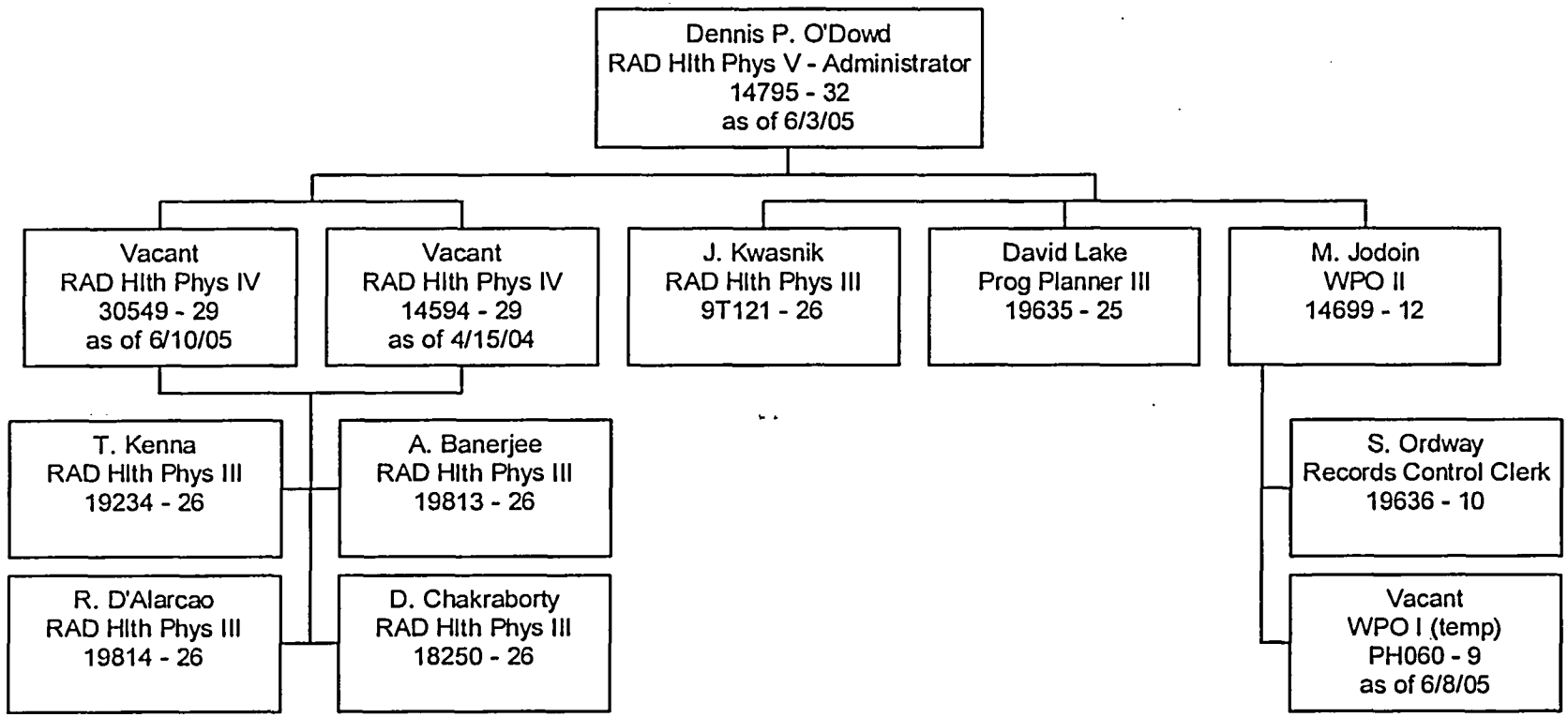
Division of Public Health Services



6/17/2004

Organizational Chart B

Department of Health and Human Services
Division of Public Health Services
Bureau of Prevention Services
Radiological Health Section
Current - 06/22/05



Organizational Chart C

APPENDIX C

HEIGHTENED OVERSIGHT PROGRAM CORRESPONDENCE

Minutes of Bimonthly Conference Calls:

1. November 23, 2004 Minutes (ML043290393)
2. January 25, 2005 Minutes (ML050460264)
3. March 30, 2005 Minutes (ML050980175)
4. June 14, 2005 Minutes (ML051860222)

Letters from/to New Hampshire:

1. November 15, 2004 Letter from Alice Bruning to Paul Lohaus with Program Improvement Plan (ML043290393)
2. December 9, 2004 Letter from Paul Lohaus to Alice Bruning (ML043440058)
3. January 5, 2005 Letter from Alice Bruning to Paul Lohaus with Detailed Completion Dates for Overdue NRC Amendments (ML050470384)
4. January 20, 2005 Letter from Alice Bruning to Paul Lohaus with Updated Program Improvement Plan (ML050470472)
5. March 22, 2005 Letter from Alice Bruning to Paul Lohaus (ML050820191)
6. May 31, 2005 Letter from Alice Bruning to Paul Lohaus (ML051650150)

APPENDIX D

PERIODIC MEETING SUMMARY

A periodic meeting was held with the New Hampshire Program Administrator by John Zabko, Team Leader, and Duncan White, Regional State Agreements Officer (RSAO), during the follow-up review pursuant to the Office of State and Tribal Programs (STP) Procedure SA-116, "Periodic Meeting with Agreement States Between IMPEP Reviews." Those topics normally documented during the periodic meeting that were reviewed and documented as part of the follow-up review will not be discussed in this Appendix. The following topics were discussed.

Status of Recommendations from 2004 Report

See Sections 2.1 and 3.1 for details.

Program Strengths and/or Weaknesses

The Administrator indicated that the program's strength is its staff. Nearly all staff have advanced degrees and diverse experience that is an asset to the program. The biggest challenge to the Section in the near future will be reclassifying the Supervisory positions and filling the vacancies.

Feedback on NRC's Program

The Administrator expressed appreciation for NRC staff's assistance with regard to a number of issues raised over the past year.

Status of Program Activities

A detailed discussion of the program's activities over the last year in staffing and training and compatibility requirements can be found in Sections 2.1 and 3.1, respectively, of the follow-up review report.

The Section is funded primarily through fees that are placed in a dedicated account for both radioactive materials and machines. The Administrator reported that the Section is currently operating with a surplus. The State's fees structure is roughly the same as those fees charged by other New England States.

The Administrator indicated that materials inspections are performed in accordance with NRC guidance in NRC Inspection Manual Chapter (MC) 2800. There are currently no overdue inspections and all inspections performed over the last year have been performed timely. NRC staff reviewed the Section's inspection tracking database and confirmed the status of the inspection program. Inspector accompaniments are being conducted of inspectors as required. Reciprocity inspections are being performed in accordance with NRC MC 1220.

At the time of the review, the Section had 26 open licensing actions. Twenty-two of the actions are less than six months old. The remaining four actions are less than a year old. All actions were assigned for review and are in various stages of review. The Administrator noted that the Section received a termination request from a thorium processor and that the licensing decommissioning plan is currently under review. Once the contractor for the individual who

performs inspections for the Section is approved, the Administrator anticipates that this individual will lead the Section's inspections efforts.

The State has one manufacturer with one active sealed source and device registration. There have been no amendment requests from the manufacturer since the 2004 review. The Administrator indicated that there are two registry sheets that need to be placed on inactive status. These sheets were not completed due to other higher priority items.

Impact of NRC Program Changes

The NRC representatives discussed materials security issues, Federal legislation that could modify the Atomic Energy Act, general licensing petition, changes in the Commission Office, new management in Region I and the retirement of the STP Director.

Internal Program Audits and Self-Assessments

The Administrator reported that currently no self-assessments were being performed. Weekly meetings are held with the Bureau Chief to discuss program issues. The Administrator indicated that he has access to the various databases and reviews them routinely to ensure those program activities are being performed.

Status of Allegations Previously Referred

No allegations were referred to the Section by Region I since the 2004 review.

Nuclear Material Events Database (NMED) Reporting

Since the last review, there have been no reportable events made by the State. The Administrator indicated that event notifications received by the Section have involved medical waste in the trash or naturally occurring radioactive material. A general discussion was held concerning the importance of maintaining current information in NMED.

Radiation Advisory Committee

The Administrator noted that the Committee continues to be supportive of the Section. The Committee usually meets on a quarterly basis and the Administrator attends the meetings and provides status briefing of the Section's activities. There is current one vacancy on the Board.

The Board will next meet on August 12, 2005 with the Commissioner of the Department to discuss their 2004 annual report.

ATTACHMENT

September 26, 2005, Letter from Mr. Dennis O'Dowd
New Hampshire's Response to Draft IMPEP Report

ADAMS: ML052800228

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6504
603-271-4588 1-800-852-3345 Ext. 4588
Fax: 603-225-2325 TDD Access: 1-800-735-2964

John A. Stephen
Commissioner

Mary Ann Cooney
Director

September 26, 2005

050CT-6 AM 9:21

STP

John Zabko
Office of State and Tribal Programs
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Zabko:

We have completed the review of the draft Integrated Materials Performance Evaluation Program (IMPEP) report dated August 26, 2005, which documents the results of the follow-up review conducted on June 26-27, 2005, of New Hampshire's Agreement State program. Overall, we believe that the report is accurate, and in particular, we are in agreement with the report findings and with the team's final recommendation that the program be found to be adequate to protect public health and safety and compatible with the Nuclear Regulatory Commission's program. Attached are a few specific comments updating and clarifying certain items contained in the draft report. Should you require further discussion of these items, I invite you to contact Mr. Dennis O'Dowd, Administrator, Radiological Health Section at (603) 271-4588, or Ms. Alice Bruning, Chief, Bureau of Prevention Services, at (603) 271-4549.

It is my understanding that the IMPEP review team will present its findings of the New Hampshire Agreement State Program follow-up review to the Management Review Board on a date yet to be determined sometime during the few weeks. New Hampshire intends to fully participate in this final review process by having technical and administrative staff available to address any of the Board's questions or concerns. The New Hampshire Program will also be responsive to any findings or recommendations the Board may have.

I thank you and your staff for the very thorough follow-up review of the New Hampshire Agreement State Program.

Sincerely,

Mary Ann Cooney, RN, MS
Director

Enclosure

cc: John Stephen, Commissioner, DHHS
Alice Bruning, Chief, Bureau of Prevention Services, Div. of Public Health Svcs., DHHS
Dennis P. O'Dowd, Administrator, Radiological Health Section, BPS, DPHS, DHHS

S/SP Review Complete

STP-00L Template
RIDS: SP01

INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF NEW HAMPSHIRE AGREEMENT STATE PROGRAM

RESPONSE TO DRAFT REPORT DATED AUGUST 26, 2005

With regard to the comments made relative to the performance indicator, "Technical Staffing and Training," we offer the following update:

- On September 13, 2005, the Division was notified that the New Hampshire Division of Personnel officially upgraded the two program management positions, (i.e., Radioactive Materials Program Manager and the Radiation Machines Program Manager) from Health Physicist II to Radiation Health Physicist IV positions, therefore, opening up the process to commence recruitment for these positions. At this time, the request for posting is in process. It is our expectation that both of these positions will be posted within the next two weeks.

- Although, as stated in the draft report, the state has amply demonstrated its ability to operate satisfactorily without the assistance of contracted health physics support over the past year, we have nevertheless renewed the contracts for both a license reviewer and a materials inspector, in order to continue the progress made in training staff and providing "as-needed" coverage, and with any significant licensing/inspection projects (e.g., decommission) that may arise during the upcoming year.

With regard to the comments made relative to the performance indicator "Program Elements Required for Compatibility," we offer the following additional comments:

- With respect to the comment made in Section 3.1.2 of the draft report that Bureau and Section management plans to request a full-time position to be used to work on rules adoption, it should be clarified that the Section is preparing a proposal to upgrade a current part-time clerical position in the Section to a full-time position that would assist the Section's professional staff member assigned to working on future regulation development.

- We would like to note that of the regulatory amendments awaiting approval by the Joint Legislative Committee on Administrative Rules (JLCAR) at this time, two of these have already been made legally binding requirements (i.e., license conditions) on applicable licenses for several months. These are the "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act," 10 CFR Part 20 amendment (61 FR 65120); and "Recognition of Agreement State Licenses in Areas under Exclusive Federal Jurisdiction Within an Agreement State," 10 CFR Part 150 amendments (63 FR 1890 and 63 FR 13773). We request that this point be considered, since in effect, the criteria set out for this indicator with respect to these two particular requirements have been met, in our opinion. However, it has come to our attention that the letters requesting formal review of these conditions were not submitted to the NRC, as was believed; therefore, we are presently preparing our formal request for review to be submitted as soon as possible.

- The final two sets of regulations awaiting approval are scheduled to be brought before the JLCAR at their next scheduled hearing date on October 20, 2005.