UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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December 2, 2003

Thomas A. Conley, CHP, Chief
Radiation and Asbestos Control Section
Bureau of Air & Radiation
Kansas Department of Health & Environment
1000 SW Jackson, Suite 310
Topeka, KS 66612-1366

Dear Mr. Conley:

A periodic meeting with Kansas was held on November 4, 2003. The purpose of this meeting was to review and discuss the status of Kansas' Agreement State Program. I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

If you 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:
Agreement State Periodic Meeting
Summary for Kansas

cc w/enclosure:
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Enclosure 1

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR KANSAS

DATE OF MEETING: November 4, 2003

ATTENDEES:

NRC

Vivian Campbell, Regional State Agreements Officer
Elmo Collins, Director, Division of Nuclear Materials Safety, Region IV
John Zabko, Office of State and Tribal Programs

State of Kansas

Ronald F. Hammerschmidt, Ph.D., Director, Division of Environment
Clark Duffy, Director, Bureau of Air and Radiation
Thomas A. Conley, Section Chief, Radiation and Asbestos Control
David J. Whitfill, Unit Supervisor, X-Ray and Radioactive Material
Susan Kang, Policy Director, Department of Health & Environment
Sandy McAdam, Legal, Department of Health & Environment
James A. Harris, Radiation Control Inspector
James A. Johnson, Radiation Control Inspector
Judee M. Walden, Radiation Control Inspector
Pam Watson, Research Analyst
Stewart E. Steen, Emergency Preparedness
Scott C. Bangert, Asbestos/ Right-to-Know

DISCUSSION:

The following is a summary of the meeting held in Topeka, Kansas, on November 4, 2003, between representatives of the NRC and the State of Kansas. During the meeting, the topics suggested in the letter dated October 7, 2003, from Ms. Campbell to Mr. Conley were discussed. The discussion pertaining to each topic is summarized below.

1. Action on Previous IMPEP Review Findings

The previous Integrated Materials Performance Evaluation Program (IMPEP) review was conducted during the period April 23 - 26, 2002. The status of the recommendations outlined in Section 5.0 of the final IMPEP report were also discussed and are summarized below.

a. **Recommendation**: The team recommends the State ensure that the Agreement Materials Program has adequate resources and an adequate complement of qualified staff. (Section 3.3)

Current Status: The Bureau has resubmitted draft fee legislation for consideration during the upcoming legislative session to the Governor's office to establish a fee fund. The Governor's office is reviewing the submittal. The proposed fee schedule is based on approximately 25 percent of NRC's fee schedule. The proposal stipulates that the Bureau will continue to be supported by the State general fund for the first year after approval. The Bureau will become fully fees supported during the second year.

The Bureau has a cross training initiative involving the radioactive materials (RAM), emergency preparedness, and asbestos staff. The Bureau's long range goal is to be able to shift resources between the programs when needed. However, because the Bureau is financially supported by the State general fund, they still have travel restrictions for training. Bureau management has hosted NRC courses in their office and has discussed developing specialized contract courses. The Bureau arranged to host NRC's licensing and inspection courses and most of the radioactive materials, emergency preparedness, and most of the Radiation and Asbestos Control Section staff were able to attend. In addition, the Bureau has been approved to offer a specialized nuclear medicine and brachytherapy course which will be contracted with local medical physicists. Management anticipates offering the course within the next 6 months. They plan to offer the course to all the Bureau technical staff including the Asbestos staff.

The Bureau filled the staff position that functionally works 25 percent in radioactive materials and 75 percent in x-ray. However, Bureau management informed NRC staff that just prior to the periodic meeting, another trained radiation control inspector had resigned and taken employment in the public sector. Management hopes to post the vacancy soon.

It is recommended that this item be reviewed at the next IMPEP review.

b. **Recommendation**: The review team recommends that the Program review all Kansas' licenses to ascertain if they require financial assurance, and take appropriate action on each affected license to ensure that all licenses meet the State's financial assurance requirements. (Section 3.4)

Current Status: Bureau management stated that all Kansas radioactive materials licenses have been reviewed to determine whether financial assurance is required. Appropriate licensing actions have been processed to ensure that State financial assurance requirements are met. In addition, the State's licensing database now includes a financial assurance tracking module to assist in this effort.

It is recommended that this item be closed at the next IMPEP review.

c. **Recommendation**: The team recommends that, when the Bureau uses legally binding requirements as alternates to rules, it submit the text of the requirements to NRC for review. (Section 4.1.1)

Current Status: The Department's major revision of radioactive materials and x-ray regulation is in various stages of the rule promulgation process. The NRC staff discussed our knowledge of Kansas regulations as summarized in the SRS Data Sheet and noted that many of the amendments were significantly overdue. The 2002 IMPEP review team had confirmed that the Department had used license conditions for most of the regulations that were not adopted within the 3-year time frame. At the time of the IMPEP review, the Department believed that the revised regulations would become effective by December 2002. Because of the delay in promulgating the regulation revisions, the NRC staff suggested that the Bureau submit their license conditions or other legally binding requirements for NRC review and Bureau management agreed.

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It is recommended that this item be reviewed at the next IMPEP review.

d. **Recommendation**: The review team recommends the Bureau adopt the regulation "Timeliness in Decommissioning of Materials Facilities," and "Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use," or adopt generally applicable legally binding alternatives to the regulations. (Section 4.1.1)

Current Status: The Bureau management stated that these amendments were included in their proposed regulations undergoing administrative and legal review.

It is recommended that this item be reviewed at the next IMPEP review.

2. Strengths and Weaknesses of the Program

Program strengths:

Bureau management identified their licensing and inspection database as a strength of the program. While the program is understaffed, the current staff is experienced and well trained. Management attributes their success in managing the program to the dedication of the staff and the effective and efficient use of the database tool. The Bureau has recently developed a database for tracking generally licensed devices.

Program weaknesses:

The Program funding and staffing continue to challenge the Bureau. The Bureau is expecting an additional 5 percent budget cut for fiscal year 2005. Bureau management stated that a fee fund would give some relief, but not immediately since full implementation would not be expected until fiscal year 2006.

Bureau management discussed the effect of the recent reclassification of inspection staff to non-exempt status. Non-exempt employees are limited to working only 40 hours per week except when approved by management. Extra time is accrued as compensatory time earned and is limited to a total cap of 120 hours. Because of reduced staffing level of the program, inspection staff have routinely worked in excess of

40 hours per week in order to keep inspections timely. Bureau management expressed concern about being able to continue to maintain the program.

3. State Feedback on NRC's Program

Bureau management expressed concern about the impacts of expected State participation in activities related to Homeland Security, and based on the Department's current financial situation, the potential for being overburdened by unfunded NRC mandates.

4. Recent or Pending State Program Changes

There are no pending State program changes with regard to reorganization and distribution of responsibilities. The inspectors were reclassified as non-exempt employees. As discussed earlier, Bureau funding continues to be a challenge. However, the State could not identify any areas where health and safety were compromised.

5. NRC Program or Policy Changes That Could Impact Agreement States

Ms. Campbell, Mr. Collins, and Mr. Zabko discussed the Region IV organization, security issues and NRC rulemaking and guidance development, specifically Part 35 and IMC 2800.

6. Internal Program Audits or Self Assessments

Bureau management assesses the status of the program on a routine basis through management reports generated from the licensing and inspection database. The Bureau currently has no backlogs in inspection or licensing. Management periodically performs inspector accompaniments and reviews all licensing and compliance actions.

7. Status of Allegations Referred by NRC to the State

No allegations were referred to the State by Region IV during the period.

8. Compatibility of Kansas Rules and Regulations

The Bureau is presently revising its regulations to incorporate all currently required amendments to the CFR. A teleconference has been schedule for December 3, 2003, to discuss the process of sending the revised regulations into the NRC for review to facilitate an efficient review.

9. Nuclear Material Events Database (NMED)

The Bureau is using the NMED database system for submitting events to INEEL. The State reports significant events to NRC's Operations Center. There have been no significant issues with the NMED system. The State's process appears to be effective for reporting events.

10. Schedule for next IMPEP Review

The next IMPEP is scheduled for fiscal year 2006.