



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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July 26, 2005

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 July 12, 2005. 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 resulting from the discussions.

If you feel that my 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 email VHC@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
As stated

cc w/enclosure:
Paul Lohaus, Director, STP

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR KANSAS

DATE OF MEETING: July 12, 2005

ATTENDEES:

State

Thomas Conley, CHP, Chief, Radiation and Asbestos Control Section
David Whitfill, CHP, Supervisor, X-Ray and Radioactive Materials
Ronald Hammerschmidt, Ph.D., Director, Division of Environment
Clark Duffey, Director, Bureau of Air and Radiation

NRC

Vivian Campbell, Regional State Agreements Officer, Region IV

DISCUSSION:

The Kansas Agreement State program is administered by the Department of Health & Environment. The day-to-day operations are managed by the Radiation and Asbestos Control Section within the Bureau of Air and Radiation, Division of Environment. The program regulates approximately 320 specific licenses authorizing Agreement materials.

The following is a summary of the meeting held in Topeka, Kansas, on July 12, 2005, between representatives of the NRC and the Bureau. During the meeting, the topics suggested in a letter dated May 9, 2005, from Ms. Campbell to Mr. Conley were discussed. The discussion pertaining to each topic is summarized below.

1. Status of Kansas' 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 April 23 - 26, 2002. The status of the recommendations outlined in Section 5.0 of the final IMPEP report were discussed at the periodic meeting conducted November 4, 2003. During the November 4 meeting, the NRC staff recommended that one of the four IMPEP recommendations be closed at the next IMPEP review. The current status of the remaining three recommendations is summarized below.

- a. **Recommendation:** The review 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's new fee schedule became effective October 8, 2004. The fees were placed in a fee fund that was designated for the Bureau. However, this money was not available to the Bureau until July 1, 2005. The State loaned the Bureau money for fiscal year 2005 operating expenses. At the beginning of fiscal year 2006, the Bureau was required to pay back half of the money borrowed from the State's general fund for the previous fiscal year's operating expenses. They are required to pay back the other half at the

beginning of fiscal year 2007. The Bureau will not realize the full benefit of the resources in the fee fund until the general fund has been reimbursed for the money loaned in fiscal year 2005.

Bureau management recognizes that they have a challenge with staff recruitment and retention. They have developed a long term plan to address this issue. Bureau management has drafted a proposed reorganization to be presented to Division management and the Secretary that identifies five or six new staff positions in the Section. Once approved, the Section will gain approximately 2.5 FTE to support the Agreement State program.

In addition, the current staff are classified as radiation control inspectors. This classification has no in-grade progression or promotion potential. Bureau management is working to reclassify these positions as Environmental Scientist II and to eliminate the radiation control inspector classification. Once approved, the new classification will give the staff a career progression and the Bureau a larger pool of potential staff candidates.

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

- b. **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 Bureau has been working on a major revision to their radioactive materials and x-ray regulations since before the 2002 IMPEP. As of the June 14, 2005 special management review board (MRB) meeting, the Bureau had submitted whole sections of their rules for review. The Bureau believes that when these rules are adopted, all of the overdue amendments will be addressed, and some rules will be adopted ahead of schedule. Section management stated that no new license conditions have been implemented since the 2002 IMPEP. Management stated that in the future they will submit legally binding requirements for NRC review if used as alternates to rules.

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

- c. **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: Section management stated that these amendments are included in the regulation packages submitted to NRC for review.

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.

d. **Program Strengths:**

Bureau management attributes their successes to the experienced, qualified staff and to the licensing and inspection database. All the supervisors are certified public managers. The Bureau has two certified health physicists, one masters in public health and two registered radiation protection technologists. The Bureau's database has been revised to improve the efficiency and function.

e. **Program Weaknesses:**

While some of the staff are experienced and well qualified, staffing continues to be a significant challenge for the Bureau. Since the last periodic meeting, the Bureau lost two of the their four staff. The Bureau filled the two vacancies, but the staff do not have any experience in radiation protection. Both staff have an environmental science background. Currently, the Bureau has only one qualified license reviewer and one qualified inspector for 320 specific Kansas licensees. The newest staff members have attended the inspection procedures course and are scheduled to attend NRC's licensing course. In addition, the Bureau has been conducting in-house health physics fundamentals training using the NRC HP fundamentals course materials.

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

Bureau management discussed generic concerns about cost and availability of NRC training courses. The expense of the 5-week health physics course in Chattanooga, Tennessee is prohibitive for the State. Because of the increasing challenge to train staff, Kansas management requested that NRC consider development of a computer based training program, specifically a fundamentals of health physics course. Even though staff resources are strained, Bureau management stated that they could commit some resources to help with the development of this course.

4. Status of State Program including:

a. **Staffing and Training:**

- i) *Number of staff in the program and status of their training and qualifications:* One supervisor currently manages the radioactive material and x-ray programs. The radioactive materials program is supported by four staff members, two are fully qualified and two are in training.
- ii) *Program vacancies:* There are no vacancies.
- iii) *Staff turnover:* The Bureau had two staff turnover since the last periodic, but they have filled these vacancies.
- iv) *Adequacy of FTE for the materials program:* The current staffing level is marginal. Because of the turnover of staff, the program now has a backlog in licensing and inspection. Section management stated that if the reorganization is approved, the program will be adequately staffed.

b. Materials Inspection Program:

- i) *Discuss the status of the inspection program including if an inspection backlog exists and the steps being taken to work off the backlog.* The radioactive materials program has an inspection backlog, five routine inspections and two initial inspections, based on NRC's criteria.

c. Regulations and Legislative changes:

- i) *Discuss status of Kansas' regulations and actions to keep regulations up to date, including the use of legally binding requirements:* On June 14, 2005, the MRB placed the Kansas program on heightened oversight due to the State's slow progress in developing rules compatible with the NRC. During the 2002 IMPEP the team had identified 20 amendments that were overdue for adoption. Since that time, two more amendments have come up for adoption. Prior to the special MRB, the State submitted 10 proposed rule packages containing the 22 amendments. These amendments are currently being reviewed by NRC staff.

The Bureau published a public hearing notice for the proposed regulations in the Kansas register on July 14, 2005. The public hearing is scheduled for September 23, 2005. Prior to the public hearing, the Bureau plans to meet with the Legislative Committee on Administrative Rules and Regulations to discuss the new regulations. The Bureau plans to introduce NRC's comments as well as the public comments at the public hearing. The Bureau will make the appropriate changes to the regulations and the changes will be sent back to the Office of Administration and the Attorney General's office for review. If the changes are substantial another public hearing will be scheduled. The rules will then be sent to the Secretary for signature. The final rules will be published in the Kansas register and will become effective in 15 days. The Bureau plans to send the final rules to NRC for a final compatibility determination.

d. Program reorganizations:

- i) *Discuss any changes in program organization including program/staff relocations and new appointments:* The Secretary has a moratorium on reorganization activities until Human Resources develops a policy. When the Secretary lifts the moratorium, the Bureau and Division management plan to forward the proposal to the Secretary for final approval.

e. Changes in Program budget/funding:

The fee fund became available to the Bureau on July 1, 2005. As discussed in Item 1.a. of this report, the Bureau will not realize the full benefit of the fee fund until after the State's general fund has been reimbursed. The Bureau has unlimited spending authority on the fee fund; however, they have no overage protection.

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

As part of the preparation for the periodic meeting, the NRC staff reviewed all the reportable events that were reported to NMED by the Office since the previous periodic meeting. The staff identified one reportable event. The Bureau uses the NMED database system to track their events and to submit event information to INEEL.

6. Response to Incidents and Allegations:

One allegation was referred since the 2003 periodic meeting. The allegation was appropriately reviewed and closed.

7. Status of the following Program areas:

Kansas does not have Sealed Source & Device, Uranium Mill, or Low-Level Waste programs.

8. Information exchange and discussion:

a. **Current State initiatives:**

The Bureau currently has an initiative to determine the extent of radioactive contamination at facilities in Kansas that possessed aircraft instruments containing radium-impregnated paint on dials and pointers. Historical radium paint stripping operations in aircraft instrument shops coupled with the disassembly of instruments containing radium-impregnated paint have resulted in significant facility contamination and in some cases mixed waste because of the solvents used in radium paint stripping. Several of these facilities have radioactive materials licenses. However, there are at least 100 instrument shops that are not licensed. None of these facilities have the economic means to pay for cleanup of these sites. The Bureau is assessing options available to provide funding for clean up activities.

b. **Emerging technologies:**

They have noticed populations of users now getting over exposures, primarily associated with x-ray, that have not been previously seen.

c. **Large, complicated or unusual authorization for use of radioactive materials:**

The Bureau has noted the use of outdated medical technology in veterinary practices, e.g., cobalt teletherapy.

d. **Kansas' mechanism to evaluate performance:**

The Bureau staff conducted a self assessment of the entire program, including the x-ray program, using the IMPEP methodology. Review of the program was conducted January 17 - 31, 2005. The staff identified program strengths and weaknesses, and made recommendations for improvement. In response to the self assessment, Bureau management prepared a corrective action plan that addressed the recommendations and outlined actions to be taken with projected completion dates.

In addition, management assesses the status of the program on a routine basis through management reports generated from the licensing and inspection database. Management has also modified the database to notify the staff of any overdue actions when they sign on the system.

e. **NRC current initiatives:**

The NRC staff discussed the regulatory issue summary regarding reporting events involving portable gauge devices and agreed to provide a copy to the Bureau. The staff also discussed sensitive information screening of documents in ADAMS, and Security Measures.

9. Schedule for the next IMPEP review:

The next IMPEP is tentatively scheduled for fiscal year 2006.