

August 30, 2007

Clyde Bolton, Director
Division of Public Health Protection & Safety
Department of Public Health
275 East Main Street
Mail Stop HS 2E-D
Frankfort, KY 40621-0001

Dear Mr. Bolton:

A periodic meeting with Kentucky was held on July 31, 2007. The purpose of this meeting was to review and discuss the status of Kentucky's Agreement State program. NRC was represented by James Kottan, via telephone, and me. Specific topics discussed at the meeting included all performance indicators and the program's progress on the seven recommendations made during the 2004 Integrated Materials Performance Evaluation Program (IMPEP) review.

I have completed and enclosed a general meeting summary. It was noted during the meeting that the program's overall performance has continued to improve since the 2005 and 2006 periodic meetings especially in the area of staffing for the program. Additional improvement is still needed in the performance indicators of "SS&D Evaluation Program" and "Compatibility Requirements." These indicators were found "Satisfactory, but Needs Improvement" during the 2004 IMPEP review. Work on addressing the recommendations made during the 2004 IMPEP review is in progress. All but one of the recommendations remain open.

This meeting will be discussed at the next quarterly Special Management Review Board meeting.

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 301-415-2320 or via email at kxs@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Kathleen N. Schneider
Senior Project Manager
State Agreements and Industrial Safety Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosure: Periodic Meeting Summary for Kentucky

cc: Dewey Crawford, Manager
Matthew McKinley, Supervisor

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR KENTUCKY

DATE OF MEETING: July 31, 2007

NRC

Kathleen Schneider, Senior Project Manager, STP
James Kottan, RSAO, Region I via teleconference

STATE

Matthew McKinley, Supervisor, Radioactive Materials Section
Vicki Jeffs, consultant to the Radioactive Materials Section

BACKGROUND:

During the July 2004, IMPEP review, the review team found Kentucky's performance to be "Satisfactory" for five performance indicators and "Satisfactory, but Needs Improvement" for three performance indicators. Seven recommendations were made by the IMPEP team. Accordingly, the review team recommended and the Management Review Board (MRB) agreed with the finding that the Kentucky Agreement State program is adequate to protect public health and safety and compatible with NRC's program. The team considered a finding of "Adequate, but Needs Improvement," but noted that the Radiation Health Branch (the Branch) identified a number of needed improvements; developed, and in some cases implemented, action plans to correct specific performance issues; and, has been approved to expand the Radioactive Materials Section's (the Section) staff. To monitor the progress of the Commonwealth's program with regard to their action plans, the MRB directed staff to conduct a periodic management meeting one year after the IMPEP review. In July 2005, a periodic meeting was held with Kentucky.

Subsequent to the July 2005, Kentucky periodic meeting, an MRB was held on October 17, 2005. The MRB requested quarterly conference calls be conducted between the appropriate Kentucky and NRC staffs to monitor the State's performance and that a periodic meeting should take place in July 2006, due to the performance found during the July 2005, meeting. Quarterly conference calls were held in February and May 2006.

A periodic meeting was again held with Kentucky on July 6, 2006. During this periodic meeting it was noted that Kentucky's program had improved its overall performance since the 2005 periodic meeting. The results of the July 6, 2006, periodic meeting were discussed during an MRB held on May 10, 2007. The MRB questioned Kentucky about open recommendations from the previous IMPEP, staffing and issues regarding regulations. Kentucky responded that all recommendations would be resolved by the next IMPEP. The staff recommended that monitoring of the Kentucky program continue. The MRB agreed with this recommendation that the period of monitoring continue. Another quarterly conference call was held in February 2007.

This summary describes the July 31, 2007, periodic meeting.

DISCUSSION:

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

The proposed status for each of the recommendations and suggestions in Section 5.0 of the 2004 Kentucky final IMPEP report is summarized below.

Recommendation 1: The review team recommends that the Branch upgrade their database so that all relevant licensee data are incorporated and maintained to ensure that inspections can be scheduled and performed in accordance with the requirements of NRC Inspection Manual Chapter (MC) 2800. Specifically, initial inspection due dates were not entered, and thus a large number of initial inspections were overdue.

Status:

The Radioactive Materials Section Supervisor (Supervisor) has continued to enhance the permanent upgrade to the database completed in 2006. The Supervisor provided both hard copies and a demonstration of the database capabilities. All relevant licensee data is incorporated into the database and maintained to ensure that all inspections can be scheduled and performed in accordance with the requirements of MC 2800. In addition, the Section conducted an audit of all inspection files against the database using temporary help. In several instances where inspection reports are missing from the files, inspections are being rescheduled and performed. The Supervisor expects to have all inspections completed by the 2008 IMPEP review.

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

Recommendation 2: The review team recommends that the Branch identify those licensees who require financial assurance and take appropriate action to have them comply with the Commonwealth's decommissioning and financial assurance requirements.

Status:

A small number of licensees have been identified as requiring financial assurance. The issues have been discussed with the licensees; however, letters have not yet been sent explaining the requirements. The Section has prepared a flow-chart for financial assurance requirements. Work in this area to identify licensees who are required to have financial assurance through the database is ongoing.

This recommendation remains open.

Recommendation 3: The review team recommends that the Branch document incident and allegation responses in accordance with its procedures and provide training on their procedures to all technical staff.

Status:

An annual training class is conducted for staff on the proper documentation of incidents and allegations as well as a booklet that includes NRC guidance and the Branch's policy is provided to staff. Staff use procedures for documenting responses to incidents and allegations. It was noted that events are being submitted to the Nuclear Materials Events Database (NMED). Review of documentation was not conducted during the meeting and thus it is recommended that this area be reviewed during the next IMPEP

review.

This recommendation remains open.

Recommendations 4-7:

The review team recommends that the Branch establish, implement and document a training program for Sealed Source and Device (SS&D) reviewers.

The review team recommends that the registration certificate evaluation criteria and document format be consistent with NUREG-1556, Volume 3.

The review team recommends that the Branch review and determine the status of SS&D registrations issued to non-Kentucky manufacturers and take appropriate action to either update or inactivate the registration certificates.

The review team recommends that the Branch implement an enforceable mechanism (e.g., rule or license condition) to have the manufacturers report defects, deviations or non-conformance of safety-related systems, structures, or components and document follow up actions.

Status on 4-7:

The Branch's sole manufacturer is Ronan Engineering. The Section has established a training program. The Branch had hired 0.5 FTE to perform SS&D functions. After training and qualification, this individual will be tasked with terminating Ohmart's old registries since they no longer manufacture in KY; developing a registration certificate evaluation and document format consistent with NUREG-1556, Volume 3; and developing license conditions to require Ronan to report defects, deviations, or non-conformance of safety related system, structures or components. Thus far, the individual has attended NRC's SS&D training workshop and on-the-job training via a contractor since the July 2006, Periodic Meeting.

These recommendations remains open.

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

During the 2004 IMPEP both the staffing level and a flawed database were identified weaknesses for the program. The Supervisor believes that now the upgraded database and the present staffing level can be considered as strengths of the Section.

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

The Supervisor discussed the practice of identifying only one contact for email distribution of information, especially those items that are distributed on the Radiation Control Program Director Only list server. The Branch has not always responded timely to requests that are sent solely to the Branch Manager, especially when he is not in the office. NRC staff discussed the various list server memberships and will explore the

whether it is possible to include other State staff on the Radiation Control Program Director Only list server. In addition, the Supervisor will explore the use of proxy mail for the Branch Manager on the Commonwealth's mail server.

Status of State program including:

a. Staffing and Training:

The Radiation Health Branch is located in the Department for Public Health offices in Frankfort. The Branch Manager is responsible for the Radioactive Materials Section, Radiation Producing Machines Section, and the Radiation/Environmental Monitoring Section. The position reports to the Director, Division of Public Health Protections & Safety. The Supervisor is primarily responsible for materials licensing and compliance activities.

There are currently six technical staff members in the Section and the Supervisor. One staff member who was activated to military duty in May 2005, is returning to the program in August 2007. An additional offer has been made, which would bring the staffing levels to eight technical staff members. Through a February 2007, contract, the Section has obtain the services of a retired Supervisor to revise the regulations. The Branch has made significant progress to fully staff the program and the support and commitment by the Director to improve program performance is evident. There was no staff turnover during the past year. Two staff members are fully-qualified. The remaining staff members are qualified to perform licensing and inspection of certain types of licensees and are working towards full qualification.

In October 2006, the salary levels were increased and most staff members received 5% or greater increase. The Supervisor believes that this staffing level will enable the Commonwealth address all the previous weaknesses and be found adequate and compatible during the 2008 IMPEP review.

b. Materials Inspection Program:

The Branch's inspection priorities are generally the same as those listed in MC 2800, with some being more restrictive. At the time of the last IMPEP, there were 10 core licenses currently overdue by more than 25 percent of the NRC inspection frequency. The Supervisor stated that he continues to work towards the goal of no overdue inspections by the next IMPEP review. The Branch has completed the initial inspections for 20 licensees that were identified as requiring increased controls. A precicensing visit will be conducted for all new licensees requiring increased controls. The 2007 inspector accompaniments have not been completed, but will be prior to the 2008 IMPEP review.

c. Regulations and Legislative changes:

There have been no legislative changes since the last IMPEP review.

The Branch is currently working on 13 NRC amendments packages, 10 of which are either overdue or only the proposed regulation had been reviewed by NRC. Work on revising the regulations began in February 2007, via a one-year contract with a former

Kentucky supervisor. Ten amendment packages have been completed by the contractor and will be submitted to the Supervisor shortly. The Supervisor anticipates submitting the draft regulation packages to NRC for review in the fall time frame to allow promulgation of final regulations prior to the next IMPEP. The following regulations are overdue:

- "Minor Corrections, Clarifying Changes, and a Minor Policy Change," 10 CFR Parts 20, 35 and 36 amendments (63 FR 39477 and 63 FR 45393) that became effective October 26, 1998.
- "Respiratory Protection and Controls to Restrict Internal Exposure," 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524) that became effective February 2, 2000.
- "Energy Compensation Sources for Well Logging and other Regulatory Clarifications," 10 CFR Part 39 amendment (65 FR 20337) that became effective May 17, 2000.
- "New Dosimetry Technology" 10 CFR parts 34, 36 and 39 amendments (65 FR 63749) that became effective January 8, 2001.
- "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. The Branch has amended the appropriate licenses with license conditions compatible with the requirements in 10 CFR 32.52 (a) and (b). The Branch has not adopted the remainder of the amendment.
- "Revision of the Skin Dose Limit," 10 CFR 20 amendment (67 FR 16298) that became effective April 5, 2002.
- "Financial Assurance for Materials Licensees," 10 CFR 30, 40, and 70 amendments (68 FR 57327), that became effective on December 3, 2003.

The following regulations have not been submitted as final regulations for NRC review:

- "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendments (60 FR 38235) that became effective November 24, 1995.
- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendments (60 FR 15649 and 25983) that became effective March 1, 1998.
- "Transfer for Disposal and Manifest; Minor Technical Conforming Amendments," 10 CFR Part 20 amendment (63 FR 50127) that became effective November 20, 1998.
- "Medical Use of Byproduct Material," 10 CFR 20, 32 and 35 amendments (67 CFR 20249) that became effective October 24, 2002.

In addition, the following regulations which will be due prior to the upcoming IMPEP review are being prepared by the contractor:

- “Compatibility with IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments,” 10 CFR 71 amendments (69 FR 3698), that became effective on October 1, 2004.
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR 30 amendments (70 FR 2001) that became effective July 11, 2005.
- “Medical Use of Byproduct Material - Recognition of Specialty Boards,” 10 CFR 35 amendments (70 FR 16336; 71 FR 1926) that became effective April 29, 2005.

d. Program reorganizations;

There were no reorganizations during this period.

e. Changes in program budget/funding;

There has been no change in the fees during this period. The Supervisor indicated that revisions to the fee structure will be considered after the completion of the revision of regulations needed for compatibility and adequacy.

Event reporting, including follow-up and closure information in NMED.

It was noted that events are being submitted to the NMED. One individual is assigned responsibility for submitting NMED information. Two incidents and several allegations have been handled by the program for this calendar year. These are tracked by the Supervisor via the "Radioactive Materials Section, Monthly Report". See response to Recommendation 3 of the 2004 IMPEP report above.

Response to incidents and allegations.

a. Status of allegations and concerns referred by the NRC for action;

There were no allegations or concerns referred by NRC to the Branch during this period.

b. Significant events and generic implications.

No significant events were identified or discussed during the periodic meeting.

Status of the following program areas:

a. Sealed Source & Device Program;

See response to Recommendation 4-7 of the 2004 IMPEP report above.

b. Uranium Mills Program; and/or,

Not applicable.

c. Low-Level Waste Program.

No change in status was identified.

Action items resulting from the meeting.

NRC staff provided the Regulations Toolbox CD and the Office of Federal and State Material and Environment Management Programs organization chart to the Section Supervisor following the meeting.

NRC staff is attempting to obtain a copy of the statements of considerations for 10 CFR, which is out of print, for the Supervisor.

NRC staff is exploring whether the Supervisor can be included on all list servers.

CONCLUSIONS:

The program's overall performance continues to improved since the 2006 periodic meeting. Additional improvement is still needed in the performance indicators of "SS&D Evaluation Program" and "Compatibility Requirements." These indicators were found "Satisfactory, but Needs Improvement" during the 2004 IMPEP review. However, with the present staffing levels and support from Kentucky management for the Section, NRC staff believes that Kentucky will be in a position to meet the requirements for all performance indicators. NRC staff concluded that the next IMPEP review should be conducted as scheduled in Fiscal Year 2008, (tentatively July 2008) and that quarterly monitoring calls should continue.