



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
475 ALLENDALE ROAD
KING OF PRUSSIA, PA 19406-1415

October 9, 2009

Dewey F. Crawford, Administrator
Radiation Control Program
Division of Public Health Protection and Safety
Department for Public Health
Cabinet for Health and Family Services
275 East Main Street, Mail Stop HS1C-A
Frankfort, KY 40621

Dear Mr. Crawford:

A periodic meeting with your Program was held on September 15, 2009. The purpose of the meeting was to review and discuss the status of the Kentucky Department for Public Health's Agreement State program. The NRC was represented by Michelle Beardsley and me.

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 (610) 337-5214, or email to James.Kottan@nrc.gov to discuss your comments.

Sincerely,

/RA/

James Kottan
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc w/ encl:
Matthew McKinley, Commonwealth of Kentucky

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR KENTUCKY DEPARTMENT
FOR PUBLIC HEALTH (DPH)

DATE OF MEETING: September 15, 2009

NRC Attendees	Kentucky Department For Public Health
James Kottan, Region I RSAO	Dewey Crawford, Radiation Control Program Administrator
Michelle Beardsley, FSME	Matthew McKinley, Radiation Health Supervisor

DISCUSSION:

During the 2008 Integrated Materials Performance Evaluation Program (IMPEP) review of the Kentucky Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for five performance indicators and satisfactory, but needs improvement, for three performance indicators. Six recommendations were made by the IMPEP review team. On October 28, 2008, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Kentucky Agreement State Program. The MRB found the Kentucky program adequate to protect public health and safety, but needs improvement, and compatible with the NRC program. The MRB requested that Kentucky continue to remain in monitoring status, and that calls between the DPH and NRC staffs continue to be conducted quarterly, and that a periodic meeting take place approximately one year from the 2008 IMPEP review.

This summary describes that periodic meeting.

The status of the State's actions to address the open recommendations follows:

1. The review team recommended that the Commonwealth revise its inspection procedures to require documentation of the closure of any previous violation, verification of corrective actions and evaluation of preventive measures implemented by the licensee both in the inspection documentation and during the exit meeting with the licensee.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

This recommendation remains open and should be evaluated at the next IMPEP review.

2. The review team recommended that the Commonwealth discuss previous inspection findings, corrective actions, and any potential violations with the licensee during inspections.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

This recommendation remains open and should be evaluated at the next IMPEP review.

3. The review team recommended that the Commonwealth use its own calibrated radiological survey equipment to perform independent confirmatory surveys during inspections.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures and the need to use Program equipment when conducting radiation surveys/measurements at licensee facilities.

This recommendation remains open and should be evaluated at the next IMPEP review.

4. The review team recommended that the Commonwealth develop and implement a reliable mechanism to identify when a license is in need of a comprehensive renewal, identify these licenses, and develop and implement a plan to perform these renewals.

Status: The Program has put in place a revised data base that tracks licensing actions and identifies when a license is in need of a comprehensive renewal.

This recommendation remains open and should be evaluated at the next IMPEP review.

5. The review team recommended that the Commonwealth integrate the pre-licensing requirements of FSME 07-026 into their licensing program and reevaluate new licenses issued since September 2007 for implementation of these requirements.

Status: The Program has put in place a specific procedure to implement the requirements of FSME 07-026; Program staff have received training on this procedure. These requirements have been implemented for new licenses issued since September 2007.

This recommendation remains open and should be evaluated at the next IMPEP review.

6. The review team recommended that the Commonwealth develop and implement a mechanism to verify the implementation of the approved quality assurance and quality control program of the Sealed Source and Device (SS&D) manufacturer's program.

Status: The Program has taken action on this recommendation. Changes were made to the manufacturing and distribution inspection forms so that during inspections of SS&D manufacturers, the staff verifies the implementation of the manufacturers' approved quality assurance and quality control programs.

This recommendation remains open and should be evaluated at the next IMPEP review.

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

An enthusiastic staff with a balanced work load and a good relationship with management is the strength of the Program. The staff is working to become more efficient, and to strengthen the Program, Radiation Producing Machines Section staff are being cross-trained to perform inspections in the medical area of the materials program. Program management has a clear vision for the Program. New policies and procedures have been implemented, and more training time is being allocated to the staff.

Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program welcomed the NRC funding of training. The National Source Tracking System (NSTS) continues to be an issue for the Program. The Program has yet to obtain access to the NSTS system, but stated that they will continue to work to resolve this problem, particularly the computer interface issues. In general, the Program found the NRC systems cumbersome to use.

Additionally, the Program noted "creep" in the requirements being implemented on the Program by various Federal Agencies in areas such as emergency planning and transportation. The Program would prefer that one Federal Agency, the NRC, provide coordination on all radioactive materials issues.

Agreement State Program Staffing and Training

The Program staff consists of nine individuals including the supervisor. The Program is fully staffed. Since the previous IMPEP, two vacancies in the Program were filled, both with experienced individuals.

Support for staff training exists in the Program. Kentucky welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses, including the NRC's Security Systems and Principles Course. The Program Supervisor noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing. The Program has allocated up to four weeks of training for each member of the staff. Additionally, a core training program has been developed, and the two recent hires will complete the new training program.

Organization

The Program is administered by the Radioactive Materials Section of the Radiation Health Branch (Branch). The Branch is part of the Division of Public Health Protection and Safety in the Kentucky Department for Public Health. In addition to the Program, the Branch is responsible for radiation producing machines, radiological emergency response and environmental radiation/radon.

Program Budget/Funding

Mr. Crawford stated that the program is adequately funded for now. Funding sources for the Bureau include fees, grants and appropriations. Program fees are approximately ten percent of NRC fees. Fee revenues are not adequate to fund the Program, but any short falls are made up by general fund appropriations.

Inspection Program

DPH's inspection frequencies are at least as frequent as NRC's. No Priority 1 or Priority 2 inspections were overdue with respect to NRC inspection frequencies. About 30 other inspections were past due. Mr. McKinley stated that the inspection backlog was manageable and not a burden on the Program. The Program maintains a database to monitor inspection

scheduling and tracking and is working on a new database. Rather than develop an in-house database, Kentucky will utilize a data base system that is available from another Agreement State. Management is aware of the importance of inspection program schedules. The Program has completed the first round of Increased Controls (IC) inspections and continues to conduct IC inspections as part of the routine health and safety inspections.

The Program had no licensing actions that were overdue. Mr. McKinley stated that the number of licenses has remained approximately constant over the last several years at about 440 licenses. Mr. McKinley also stated that the Program is aware of the requirement for "pre-licensing" visits, and pre-licensing visits will be conducted. The Program averages about 60 licensing actions per month, including about seven amendments in entirety.

Regulations and Legislative Changes

There have not been any legislative changes or proposals that have affected the Program. There has been legislation proposed that would prohibit the construction of a nuclear power plant in Kentucky unless there is a solution for the disposal of the associated radioactive waste.

The following regulations are overdue:

- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendment (60 FR 15649 and 60 FR 25983) was due for Agreement State implementation on March 1, 1998. (RATS ID 1995-3)
- "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendment (60 FR 38235), was due for Agreement State implementation on November 24, 1998. (RATS ID 1995-6)
- "Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 amendment (60 FR 48623), was due for Agreement State implementation on October 20, 1998. (RATS ID 1995-7)
- "10 CFR Part 71: Compatibility with the International Atomic Energy Agency," 10 CFR Part 71 amendment (60 FR 50248 and 61 FR 28724), was due for Agreement State implementation on April 1, 1999. (RATS ID 1996-1)
- "Minor Corrections, Clarifying Changes and a Minor Policy Change," 10 CFR Parts 20, 35, and 36 amendment (63 FR 39777 and 63 FR 45393), was due for Agreement State implementation on October 26, 2001. (RATS ID 1998-5)
- "Transfer for Disposal and Manifests: Minor Technical Conforming Amendment," 10 CFR Part 20 amendment (63 FR 50127), was due for Agreement State implementation on November 20, 2001. (RATS ID 1998-6)
- "Respiratory Protection and Controls to Restrict Internal Exposure," 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524), was due for Agreement State implementation on February 2, 2003. (RATS ID 1999-3)

- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337), was due for Agreement State implementation on May 17, 2003. (RATS ID 2000-1)
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendment (65 FR 63749), was due for Agreement State implementation on January 8, 2004. (RATS ID 2000-2)
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendment (65 FR 79162), was due for Agreement State implementation on February 16, 2004. (RATS ID 2001-1)
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), was due for Agreement State implementation on April 5, 2005. (RATS ID 2002-1)
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendment (67 FR 20250), was due for Agreement State implementation on October 24, 2005. (RATS ID 2002-2)
- “Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327), was due for Agreement State implementation on December 3, 2006. (RATS ID 2003-1)
- “Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments,” 10 CFR Part 71 amendment (69 FR 3697), was due for Agreement State implementation on October 1, 2007. (RATS ID 2004-1)
- “Medical Use of Byproduct Materials - Recognition of Specialty Boards - Part 35,” 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), was due for Agreement State implementation on April 29, 2008. (RATS ID 2005-2)
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 amendment (70 FR 2001), was due for Agreement State implementation on October 1, 2007. (RATS ID 2005-1)
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendment (71 FR 15005), was due for Agreement State implementation on March 27, 2009. (RATS ID 2006-1)

The Program plans to submit the above regulations to the Cabinet for Health and Family Services for review by October 1, 2009 and to the Legislative Review Committee for review by October 15, 2009. After these reviews, the regulations will be available for public comment.

Event Reporting

The Program communicates reportable incidents to the NRC Operations Center and Region I when appropriate in prompt manner. Since the last Periodic Meeting in August 2008, four events were reported to the NRC. All of these events were medical events.

Response to Incidents and Allegations

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program is aware of the need to maintain an effective response to incidents and allegations.

Current State Initiatives

The Program's priority initiative is implementing the currently overdue NRC regulations. Other Program initiatives involve decommissioning of an old refractory manufacturing facility, environmental monitoring of a gaseous diffusion facility in the Commonwealth and remediation issues with EPA at the former low-level radioactive waste site located in the Commonwealth. The Program is also involved in emergency response efforts with Federal, Commonwealth, and local law enforcement and fire departments.

Commonwealth's Mechanisms to Evaluate Performance

Mr. Crawford stated that the Branch conducts self assessments by tracking program statistics, supervisor accompaniments of inspectors, assessing time management, holding monthly staff program meetings and by peer and supervisory review of licensing actions and inspection results.

Action Items Resulting From the Meeting

NRC:

- FSME will provide Kentucky with copies of selected ANSI Standards and NRC forms 4 and 5.

- FSME will provide a response to Kentucky regarding NRC serving as a focal point for coordination among Federal Agencies for issues involving radiation and radioactive materials.

DPH:

- DPH will review RATS IDs 1997-5 for implementation.

CONCLUSIONS:

Kentucky's program continues to improve. Kentucky has been responsive to the recommendations that were made during the 2008 IMPEP review. All of the recommendations made during the IMPEP have been addressed. Draft overdue regulations were submitted for NRC review, NRC comments were incorporated, and the regulations have begun the process for State approval. Although Kentucky cannot predict a date for implementation of the final

regulations, they are hoping for a fall 2009 implementation. The program is adequately staffed. The effort to reduce the inspection backlog continues.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2012 (tentatively August 2012).