UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

April 10, 2013

MarySue Semerena, Administrator
Environmental Health Unit
Department of Health and Human Services
301 Centennial Mall South
P.O. Box 95026
Lincoln, Nebraska 68509-5026

Dear Ms. Semerena:

A periodic meeting with you and your staff was held on March 7, 2013. The purpose of this meeting was to review and discuss the status of the Nebraska Agreement State Program. The NRC was represented by Vivian Campbell and Linda Gersey from the Division of Nuclear Materials Safety (DNMS) in NRC Region IV, Janine Katanic from the Office of Federal and State Materials and Environmental Management Programs (FSME), and me. I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

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) 200-1143 or e-mail Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for Nebraska

cc w/enclosure:
Julia A. Schmitt, Program Manager

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE
NEBRASKA DEPARTMENT OF HEALTH

DATE OF MEETING: MARCH 7, 2013

NRC Attendees	Nebraska Attendees
Randy Erickson, RSAO	Julia A. Schmitt, Program Manager
Vivian Campbell, DNMS	Howard Schuman, Health Physicist
Linda Gersey, RSAO	Jim DeFrain, Health Physicist
Janine Katanic, FSME	Bryan Miller, Health Physicist
	Trudy Hill, Health Specialist

DISCUSSION:

The Nebraska Agreement State program (the Program) is administered by the Office of Radiological Health consisting of four program areas all under the direction of the Program Manager. These include Radioactive Materials, Materials Security, X-Ray and Emergency Response. The Program reports to the Environmental Health Unit of the Health Licensure and Investigations Section of the Division of Public Health (Division). The Chief Medical Officer leads the Division and reports to the Chief Executive Officer of the Department of Health and Human Services. At the time of the meeting, the Nebraska program regulated approximately 150 specific licenses.

The previous IMPEP review was conducted the week of October 4-7, 2010. At the conclusion of the review, the team recommended that Nebraska's performance for all performance indicators reviewed be found satisfactory, and made no recommendations regarding the performance of the Program.

Other topics covered at the meeting included.

Program Strengths: The Nebraska Program is a stable program that has not experienced any staff losses since 2000. Their dedicated staff is very experienced and works together cohesively. Both the Program Manager and the Unit Administrator are supportive of the staff's activities, and the staff is supportive of each other. The Program is very proactive in addressing health, safety and security of radioactive materials within the State. The staff meets bi-weekly where a comprehensive review of all licensing, inspection, and incident and allegation activities are conducted. They also assign new work at these meetings based on the current workload of the staff. Goals are discussed and benchmarked, and schedules are adjusted as necessary. Peer reviews are conducted on all licensing actions and inspection reports which have resulted in a high degree of consistency within the Program.

Program Weaknesses: The Program noted what they believe to be their biggest weakness, and that is in the area of knowledge management. They have begun to plan for retirements that may begin within the next few years and have found this to be a real

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challenge for them. They also noted that they only have one individual in rule development which could cause issues for them if this person were to leave.

Feedback on NRC's Program:

The Program questioned the necessity for NRC to call for updates on licensees who may have been affected by fires, floods, etc. The Program reported that in most cases, they are unaware of issues from natural disasters unless the licensee reports back to them.

The Program reported that they enjoy their working relationship with the NRC and the SAO. They noted that they receive help quickly when it's requested.

The Program noted that the NUREG 1556 series is outdated.

The Program requested Agreement State training on Safety Culture, possibly through a webinar or similar delivery vehicle. This was requested so that Agreement State staff and management can hear the same message on Safety Culture and be able to provide a consistent message to their licensees.

Staffing and training:

The Program has a total of three Health Physicists dedicated to the radioactive materials program. They are supported by one Health Specialist and one Staff Assistant. The Program is managed by the Program Manager. Currently the Program has no vacant technical positions.

Program reorganizations:

The Program reported no major reorganizations since the last IMPEP review.

Changes in Program budget/funding.

The Program has not experienced problems with budgeting or funding.

Materials Inspection Program:

The Program reported that they currently have no overdue inspections. Routine inspections are generally performed by the due date and initial inspections are typically performed within 12 months of issuance. They have identified and located approximately 350 general licensees and issue annual certifications of possession to each of them.

The Program reported that while performing reciprocity inspections is always a challenge, they have been keeping up with them.

Annual supervisory accompaniments were defined by the Program Manager as performance based accompaniments. Because the three health physicists are all long term, seasoned inspectors; the Program Manager will either accompany each inspector through the year on investigations or special inspections then evaluate their performance on this work, or an accompaniment is performed by a peer. They also perform peer reviews on all inspection reports generated. They believe this model is a more effective way to comprehensively evaluate staff performance rather than one supervisor accompaniment each year.

Regulations and Legislative changes:

The Program reported that since the last IMPEP review a new law was passed in the State that has resulted in an increase in the time it takes for the Program to process and complete rulemaking packages. The Program reported that the new law requires that all State rules that are legislatively mandated must be adopted within 12 months and that these rules have priority and are processed before rules that are not legislatively mandated. Other rules, such as those rules required by NRC as a matter of compatibility, must wait in the queue for the legislatively mandated rules to be processed first. If during the waiting period another legislatively mandated rule is passed, it will be processed before other non-legislatively mandated rules that are waiting in the queue. Prior to the new law, the Program's rulemaking process took an average of 12 months from the beginning of the rulemaking process to when the rules became final.

The Program illustrated the impact of the new law with the most recent rulemaking package that they sent through the process. This rulemaking package took almost 900 days (nearly 2.5 years) to be processed and finalized. Of those nearly 900 days, the Program was responsible for 152 days, of which 67 were required for notice for public notice of hearing. The remainder of time, approximately 740 days, was spent waiting in the queue behind legislatively mandated rules and being processed through legal reviews and those reviews required by the Attorney General and Governor's office. The Program expressed that these delays occurred outside of their Division and were beyond their control. The Program began the most recent rulemaking process on July 14, 2010, and the rules were made effective on February 24, 2013. As a result of this recent rulemaking experience, the Program believes this new law may impede their ability to remain compatible with NRC requirements for timely rule adoption. Additionally, the Program noted that per the Governor's office, they are only allowed to process one rulemaking package per year.

The rulemaking package that was finalized on February 24, 2013, included regulations that were previously reviewed by NRC as final but NRC had comments on the State's proposed changes to the final rules; the Program reported that they addressed NRC's comments. The other regulations in the rulemaking package were previously reviewed by NRC as proposed regulations. The Program addressed NRC's comments on the proposed regulations in the final regulations. The Program noted that they were going to submit the final regulations to NRC for review in the near future.

The following amendments were part of the recent rulemaking package and were adopted as final on February 24, 2013:

The following regulations were previously reviewed by NRC as final but the NRC had comments on the proposed revisions to the final rules. The Program reported that they addressed NRC's comments in the February 24, 2013, revision to the final rules.

- "Financial Assurance for Materials Licensees," 10 CFR parts 30, 40, and 70 amendments (68 FR 57327), that was due for Agreement State Adoption on December 3, 2006.

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

The following regulations were previously reviewed by NRC as proposed and the NRC had comments on the proposed rules. The Program reported that they addressed NRC's comments in the in the February 24, 2013, final rules.

- "Medical Use of Byproduct Material – Minor Corrections and Clarifications," 10 CFR Parts 32 and 35 amendments (72 FR 45147, 72 FR 54207), that was due for Agreement State adoption by October 29, 2010.

- "Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements," 10 CFR Parts 30, 31, 32, and 150 amendments (72 FR 58473), that was due for Agreement States adoption by December 17, 2010.

- "Requirements for Expanded Definition of Byproduct Material," 10 CFR Parts 20, 30, 31,32, 33, 35, 61, and 150 amendments (72 FR 55864), that was due for Agreement State adoption by November 30, 2010.

- "Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent," 10 CFR Parts 19 and 20 amendments (72 FR 68043), that was due for Agreement State adoption by February 15, 2011.

- "Medical Use of Byproduct Material – Authorized User Clarification," 10 CFR Part 35 amendment (74 FR 33901), that was due for Agreement State adoption by September 28, 2012.

The State will need to address the following amendments in the future:

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40, and 70 amendments (76 FR 35512), that is due for Agreement State adoption by December 17, 2015.

- "Licenses, Certifications, and Approvals for Materials Licensees," 10 CFR Parts 30, 36, 39, 40, 70, and 150 amendments (76 FR 56591), that is due for Agreement State adoption by November 14, 2014.

- "Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule Text)," 10 CFR Part 31 amendment (77 FR 3640), that is due for Agreement State adoption by January 25, 2015.

- "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," 10 CFR Part 71 amendment (77 FR 34194), that is due for Agreement State adoption by August 10, 2015.

- "Technical Corrections," 10 CFR Parts 30, 34, 40, and 70 amendments (77 FR 39899), that is due for Agreement State adoption by August 6, 2015.

- "Requirements for Distribution of Byproduct Material," 10 CFR Parts 30, 31, 32, 40, and 70 amendments (77 FR 43666), that is due for Agreement State adoption by October 23, 2015.

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

The Program reported that all NMED information is up to date. All items are closed.

Response to incidents and allegations.

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program Manager has placed a high emphasis on maintaining an effective response to incidents and allegations.

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

No allegations were referred to the Program by NRC. The Program reported that no allegations were reported directly to them since the previous IMPEP review.

Significant events and generic implications.

The Program reported no significant events with generic implications.

Current State Initiatives.

The Program stated they have completed limiting possession limits on all licenses including Increased Controls licenses.

Emerging Technologies.

None noted.

Large, complicated, or unusual authorizations for use of radioactive materials.

None noted.

State's mechanisms to evaluate performance.

As noted above the Program identified their process for performing peer reviews on 100 percent of all licensing and inspection activities as one mechanism for evaluating performance. They also noted their biweekly staff meetings as another method for ensuring that performance is continuously evaluated.

Current NRC initiatives:

Several NRC initiatives and items of interest were discussed with the Program. Topics of discussion included: the status of 10 CFR Part 37 "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material;" the issuance of NUREG-2155 "Implementation Guidance for 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material;" the pending direct final rule that will amend the regulations to remove the SGI-M categorization; and the activities of the NRC/OAS Part 37 Implementation Working Group. Other items discussed with the Program included: the ongoing efforts to revise NUREG-1556 licensing guidance series; NRC's safety culture activities; Web-Based Licensing; and several recently issued FSME and RCPD letters.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held as scheduled in 2015.