



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

February 23, 2010

Dennis P. O'Dowd, Administrator
Radiological Health Section
Division of Public Health Services
Department of Health and Human Services
29 Hazen Drive
Concord, NH 03301-6504

Dear Mr. O'Dowd:

A periodic meeting with your Office was held on October 16, 2009. The purpose of the meeting was to review and discuss the status of the New Hampshire Department of Health and Human Services' Agreement State program. The NRC was represented by Monica Orendi 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) 337-5371, or email to Donna.Janda@nrc.gov to discuss your comments.

Sincerely,

/RA/

Donna M. Janda
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES
RADIOLOGICAL HEALTH SECTION

DATE OF MEETING: October 16, 2009

NRC Attendees	New Hampshire Radiological Health Section Attendees
Donna Janda, Region I RSAO	Dennis O'Dowd, Administrator
Monica Orendi, FSME	Twila Kenna, Manager, Radioactive Materials Program

DISCUSSION:

In September 2008, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the New Hampshire Department of Health and Human Services (DHHS) Agreement State Program's (the Program) performance to be satisfactory for six performance indicators and satisfactory, but needs improvement, for the indicator Compatibility Requirements. One recommendation was made by the review team regarding the Program. On December 5, 2008, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and compatible with the NRC's program. Based on the results of the IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately four years and that a periodic meeting be held in approximately one year from the date of the IMPEP.

This summary describes that periodic meeting.

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

1. The review team recommends that the State develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Current status: The State has submitted seven regulation packages to NRC for review since the September 2008 IMPEP. Four of these packages were under review at the time of this meeting. The State has not developed a formal action plan to address this recommendation; however, the State has made significant progress on addressing overdue regulations through the use of legally binding license conditions to meet compatibility requirements. In addition, the Program has received approval for two new staff positions, one of which will be dedicated to rulemaking activities. The Program is currently seeking funding for the new positions.

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

TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths:

A well-trained, stable, and experienced staff is a major strength of the Program. The Program has also been very successful in training junior technical staff. An additional strength was meeting all of the licensing and inspection Program goals during implementation of increased security requirements including Increased Controls inspections, fingerprinting, and implementation of the National Source Tracking System. The Program receives good management and administrative support. The Program Administrator noted that the Radiation Advisory Committee is also very supportive of the Program.

Program Weaknesses:

The Program Administrator identified the State's rulemaking process as a weakness due to the resource commitments needed to maintain up-to-date regulations. The Program Administrator noted that once the new staff position dedicated to rulemaking is funded, this weakness should be alleviated. The staff noted that the Program's website needs to be updated but IT staff support is limited at this time.

Feedback on the NRC's Program:

The Program staff commented that the overall relationship with the NRC is good. In particular, the Program noted that the NRC funding of training is appreciated.

Agreement State Program Staffing and Training:

Since the September 2008 IMPEP, the Program has had no changes in personnel and has been fully staffed. The Program, which is headed by the Program Administrator, has two Program Managers and four technical staff. One Program Manager is dedicated to the Radioactive Materials Program and the other is dedicated to the Radiation Machines Program. The Program has received approval for two new technical positions, one of which will also be responsible for rulemaking activities; however, due to current budget constraints the positions have not been filled.

Support for staff training exists in the Program. DHHS welcomed the NRC's revised policy on funding training for Agreement States. Program staff members attend NRC and other training courses and seek alternate resources for training such as in-house and on-the-job training. The Program also takes advantage of training opportunities with neighboring Agreement States.

Organization:

The Program is administered by the Radiological Health Section (the Section), which is part of the Division of Public Health Services in the Department of Health and Human Services. In addition to the Program activities, the Section is responsible for radiation-producing machines and radiological emergency response activities. Due to budget issues, a proposed change to the Program's organization has been put on hold.

Program Budget/Funding:

The Program Administrator stated that fees from radioactive materials licensees are placed into a dedicated fund which adequately funds the Program. The Program also receives fees from utilities and x-ray registrants located in the State.

Inspection/Licensing Programs:

The Program has approximately 80 radioactive materials licenses. The Program's inspection frequencies are at least as frequent as NRC's. No inspections were overdue at the time of this meeting. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules. The Program has completed the first round of IC inspections and continues to conduct IC inspections in conjunction with the routine safety inspection.

The Program maintains a database for tracking licensing actions and did not have a licensing backlog at the time of this meeting. The Program is aware of the requirement for "pre-licensing" visits. The Program hand delivers all new licenses and will not issue a license if the information gathered during the pre-licensing visit does not match the information provided in the license application.

Regulations:

Since the September 2008 IMPEP, the State submitted one final regulation package, one proposed regulation package, and five legally binding requirements to NRC for a compatibility review to address the following amendments:

- "Licensing and Radiation Safety Requirements for Irradiators," 10 CFR Part 36 amendment (58 FR 7715), that was due for Agreement State implementation on July 1, 1996.
- "Criteria for the Release of Individuals Administered Radioactive Material," 10 CFR Parts 20 and 35 amendment (62 FR 4120), that was due for Agreement State implementation on May 29, 2000.
- "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations," 10 CFR Part 35 amendment (63 FR 37059), that was due for Agreement State implementation on July 1, 2001.
- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327), that was due for Agreement State implementation on December 3, 2006.
- "Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments," 10 CFR Part 71 amendment (69 FR 3697), that was due for Agreement State implementation on October 1, 2007.

- “National Source Tracking System – Serialization Requirements,” 10 CFR Part 32 with reference to Part 20 Appendix E amendment (71 FR 65685), that was due for Agreement State implementation on February 6, 2007.
- “National Source Tracking System,” 10 CFR Part 20 amendment (71 FR 65685, 72 FR 59162), that was due for Agreement State implementation on January 31, 2009.

The following amendments are overdue, one of which is significantly beyond three years from the effective date:

- “Medical Use of Byproduct Material,” 10 CFR parts 20, 32, and 35 amendment (67 FR 20249), that was due for Agreement State implementation on October 24, 2005.
- “Medical Use of Byproduct Material – Recognition of Specialty Boards,” 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008.
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendment (71 FR 15005), that was due for Agreement State implementation on March 27, 2009.

According to the Program Administrator, the first two regulation packages described above have been drafted and will be submitted to NRC for review as soon as possible.

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

- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 amendment (72 FR 45147 and 72 FR 54207), that is due for Agreement State adoption by October 29, 2010.
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendment (72 FR 55864), that is due for Agreement State adoption by November 30, 2010.
- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendment (72 FR 58473), that is due for Agreement State adoption by December 17, 2010.
- “Occupational Dose Records, Labeling, Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendment (72 FR 68043), that is due for Agreement State adoption by February 15, 2011.
- “Medical Use of Byproduct material – Authorized User Clarification,” 10 CFR Part 35 (74 FR 33901), that is due for Agreement State adoption by September 28, 2012.

Event Reporting:

The Program has reported one event to the NRC since the 2008 IMPEP review. Follow up and closure information for all events reported by the Program are included in the State's NMED entries.

Response to Incidents and Allegations:

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for the potential effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. No allegations were referred from NRC to the Program since the 2008 IMPEP review.

Significant Events and Generic Implications:

The Program reported that no significant events have occurred since the 2008 IMPEP review. No generic implications have been identified.

Current State Initiatives:

The Program developed a formal plan and initiated a seven-year period for full renewals of materials licenses.

Emerging Technologies:

One licensee has started using electronic brachytherapy treatments in place of high dose rate remote afterloader treatments.

Large, Complicated, or Unusual Authorizations for Use of Radioactive Material:

DHHS has received a license application for a veterinary equine medical and surgical center. In addition, the Program has received an application for a new radiography license which will need to incorporate Increased Controls requirements prior to license issuance. The Program has not received any unusual requests for use of radioactive materials.

State's Mechanisms to Evaluate Performance:

All training, licensing, and inspection information is tracked on Program databases. All documents created by the radioactive materials staff are audited by the Program management. All licenses are signed by the Program Administrator. Supervisors perform inspection accompaniments of all materials inspectors. The Program holds biweekly staff meetings and monthly updates on the status of inspections and licensing actions.

Current NRC Initiatives:

NRC staff discussed ongoing initiatives with the DHHS staff. These included pre-licensing guidance, fingerprinting orders, national source tracking, web-based licensing, generally-licensed devices, safety culture, FSME management changes, and enhancements to the FSME website.

Summary:

The New Hampshire radioactive materials program continues to be a strong, stable Agreement State program. The Program staff is experienced and well trained. The Program has stable funding; however, overall State budget issues continue to be a concern. With the increased focus on the safety and security of radioactive material, program resources have become much more critical and the State is closely monitoring the need to increase staffing when necessary.

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