



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

July 6, 2004

Ms. Susan Jablonski, Technical Advisor
Office of Permitting, Remediation
and Registration
Texas Commission on Environmental Quality
P.O. Box 13087, MC 122
Austin, Texas 78711-3087

Dear Ms. Jablonski:

A periodic meeting with the Texas Commission on Environmental Quality (the Commission) was held on June 7, 2004. The purpose of this meeting was to review and discuss the status of Texas' Agreement State Program. 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 (817) 860-8143 or e-mail VHC@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
Agreement State Periodic Meeting
Summary for the Commission

cc w/enclosure:
Paul Lohaus, Director, OSTP

Susan Jablonski

-2-

bcc w/enclosure via e-mail ADAMS distribution:

E. Collins
M. Satorius
L. McLean
V. Campbell
P. Larkins, OSTP
K. Schneider, OSTP
L. Rakovan, OSTP
W. Maier
C. Cain

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NAME	VHCampbell					
	/RA/					
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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE COMMISSION

DATE OF MEETING: June 7, 2004

ATTENDEES:

NRC

Vivian Campbell, Regional State Agreements Officer (RSAO)
Elmo Collins, Director, Division of Nuclear Materials Safety, Region IV
Patricia Larkins, Office of State and Tribal Programs (STP), by telephone

The State of Texas

Susan Jablonski, Low-Level Radioactive Waste Specialist, Office of Permitting, Remediation and Registration
George FitzGerald, Team Leader, Waste Permits Division, Office of Permitting, Remediation and Registration
Don Redmond, Staff Attorney, Environmental Law Division, Office of Legal Services
Dan Eden, Acting Deputy Director, Office of Permitting, Remediation and Registration

DISCUSSION:

The Texas Agreement State Program is administered by two State agencies, the Texas Department of Health and the Texas Commission on Environmental Quality (the Commission). The Commission has regulatory responsibility for low-level radioactive waste disposal sites and the decommissioning of former burial sites. The last Integrated Materials Performance Evaluation Program (IMPEP) Review of Texas' Agreement State Program was August 27-31, 2001, and the last periodic meeting was held on December 2, 2002.

The following is a summary of the meeting held in Austin, Texas, on June 7, 2004, between representatives of the NRC and the Commission. During the meeting, the topics suggested in the letter dated April 12, 2004, from Ms. Campbell to Ms. Jablonski were discussed. The discussion pertaining to each topic is summarized below.

1. Strengths and Weaknesses of the Program

a. Program strengths:

The Commission has received good support from management and the legislature in preparation to receive applications for the low-level radioactive waste disposal site. The staff has doubled in size since the last periodic meeting. They anticipate receiving an additional 1.5 FTE for the next fiscal year for the Commission's Office of Legal Services. In addition, management has approved a process for contracting additional technical

support through interagency contracts to augment their technical expertise where needed.

The Commission implemented the low-level radioactive waste disposal site rulemaking package in seven months. They met the legislature's statutory deadline which was a major accomplishment.

b. Program weaknesses:

The Commission expects to receive applications for the low-level radioactive waste disposal site by August 6, 2004. The formal review process will begin at that time. Since this is a new process, the Commission acknowledged that the staff will be learning during the process.

3. State Feedback on NRC's Program

Training is a major concern for the Commission because of the need to train the new staff. The State is still experiencing travel restraints; therefore, out-of-state travel is a challenge. All out-of-state travel must be approved by the Deputy Director of the Office of Permitting, Remediation and Registration. The Commission indicated that it would be beneficial if more training could be regionalized. The Commission is particularly interested in the Inspecting for Performance course, the MARSSIM course, and a transportation course specific to transporting low-level radioactive waste. The Commission expressed their willingness to host any of these courses and indicated that they have a training facility. The RSAO coordinated with STP staff and instructed the Commission to prepare a letter to STP outlining their request to provide these training courses. STP will then forward the letter to Technical Training Division in Chattanooga to determine the feasibility.

4. Status of State Program

a. Staffing and training:

- i) As discussed earlier, the program has doubled its staff since the last periodic meeting and training the new staff is a challenge for the Commission.
- ii) The Commission indicated that there are no vacancies.
- iii) The Commission had two staff retire during the period. However, they were able to fill both positions promptly.
- iv) The Commission has adequate FTEs to complete the permitting action. They have not developed an inspection program specific to the new low-level radioactive waste disposal licensing action.

- b. Inspection Program:
 - i) The Commission does not anticipate implementing an inspection program until the license is issued and construction is underway. They will be establishing a resident inspection program specific to the new low-level radioactive waste disposal licensing action. Currently, the Commission has one FTE on staff who is experienced in inspection of radioactive material disposal facilities.
- c. Regulations and Legislative changes:
 - i) The Commission's Low-level Radioactive Waste rules are finalized and became effective January 8, 2004. They will need to promulgate rules for fee setting for commercial disposal of low-level radioactive waste.
- d. Program reorganizations:
 - i) The Commission was reorganized approximately five years ago into functional units (Refer to the attached organization chart). Licensing of the low-level radioactive waste disposal site is the responsibility of the Waste Permits Division of the Office of Permitting, Remediation and Registration. The inspection and associated enforcement activities are the responsibility of the Office of Compliance and Enforcement. Both Offices report to the Executive Director, who reports directly to the Commissioners. The Commission does not anticipate any further reorganization at this time.
- e. Changes in Program budget/funding:
 - i) The Commission expects to get an increase in their budget once they have an applicant, based on the acquired fees. The applicant is required to pay a non-refundable application fee in addition to cost-based fees.

5. Event Reporting

The Commission has not had an event item to report to NRC during this period. However, the staff is aware of the NMED system and the procedures for event reporting in STP procedure SA-300.

6. Response to Allegations

No allegations were referred by NRC to the State during the period.

7. Information exchange and discussion

a. Current State initiatives:

The Commission expressed concern about the advanced notice of proposed rulemaking (ANPR) issued by EPA on November 18, 2003. The notice outlined methods that EPA is considering to improve the safe management and disposal of waste containing small amounts of radioactive materials ('low-activity' radioactive waste). The comment period closed on May 17, 2004. The Commission expressed

its concern that this regulation could undermine the viability of the low-level radioactive waste disposal site and requested feedback from NRC.

The RSAO informed the Commission that EPA had received approximately 1500 comments. No decisions have been made and both NRC and EPA will be evaluating the feasibility of pursuing this rulemaking. The Commission was provided the link to EPA's web site in order to follow their efforts on Mixed Waste, including the ANPR and the comments.

- b. State's mechanisms to evaluate performance, as applicable:

The Commission has internal auditors that assess the performance of the program and conduct management risk assessments. The Commission will also be providing periodic update on the progress of licensing the disposal site to the Commissioners and the Texas Legislature.

- 8. Schedule for the next IMPEP review.

The next IMPEP is tentatively scheduled for September 2005. The Commission requested that NRC consider scheduling the IMPEP late in September because they will be heavily involved in the license application technical review.



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NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

July 7, 2004

Mr. Richard Ratliff, Chief
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3189

Dear Mr. Ratliff:

A periodic meeting with the Bureau of Radiation Control (the Bureau) was held on June 8, 2004. The purpose of this meeting was to review and discuss the status of Texas' Agreement State Program. 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 (817) 860-8143 or e-mail VHC@NRC.GOV to discuss your concerns.

Sincerely,

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Vivian H. Campbell
Regional State Agreements Officer

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Paul Lohaus, Director, OSTP

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- C. Cain

ADAMS: Yes Initials: VHC
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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE BUREAU

DATE OF MEETING: June 8, 2004

ATTENDEES:

NRC

Vivian Campbell, Regional State Agreements Officer
Elmo Collins, Director, Division of Nuclear Materials Safety, Region IV
Patricia Larkins, Office of State and Tribal Programs, by phone

State of Texas

Rick Bays, Associate Commissioner for Consumer Health Protection
Richard Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health
Ruth McBurney, Director, Division of Licensing, Registration and Standards
Alice Rogers, Director, Division of Compliance and Inspection
William Silva, Deputy Director, Radioactive Materials Inspection
Ruben Cortez, Deputy Director, Environmental Monitoring and Special Programs
Cindy Cardwell, Deputy Director, Standards and Special Programs
Bob Burkhart, Incident Investigation Program
Pete Myers, Deputy Director, Radioactive Material Licensing
Gary Smith, Deputy Director, Environmental Assessments
Margaret Henderson, Advisory Board Liaison

DISCUSSION:

The Texas Agreement State Program is administered by two State agencies, the Bureau of Radiation Control within the Texas Department of Health (the Bureau) and the Texas Commission on Environmental Quality. The Bureau regulates approximately 1600 specific licenses authorizing agreement materials. In addition, the Bureau has regulatory authority for the 11e(2) uranium recovery program. The last Integrated Materials Performance Evaluation Program (IMPEP) Review of the Texas Agreement State Program was August 27 - 31, 2001, and the last periodic meeting was held on December 2, 2002.

The following is a summary of the meeting held in Austin, Texas, on June 8, 2004, between representatives of the NRC and the Bureau. During the meeting, the topics suggested in the letter dated April 12, 2004, from Ms. Campbell to Mr. Ratliff were discussed. The discussion pertaining to each topic is summarized below.

1. Action on Previous IMPEP Review Findings

The status of the recommendations outlined in Section 5.0 of the final 2001 IMPEP report were discussed and are summarized below.

- a. Recommendation: The review team recommends that the Department (Bureau) adhere to the policy of annual supervisory accompaniments of all qualified inspectors.

Current Status: The Bureau stated that inspector accompaniments were up-to-date. Inspector accompaniments are assigned to the Regional Health Physics Coordinators as part of their routine duties. It is recommended that this item be reviewed at the next IMPEP review.

- b. Recommendation: The review team recommends that the Department (Bureau) report all significant and routine events as well as follow-up event information to the NRC in accordance with the STP Procedure SA-300, Reporting Material Events.

Current Status: As part of the preparation for the periodic meeting, the NRC staff reviewed all the reportable events that were reported to NMED by the Bureau since the previous IMPEP review. The staff identified 152 events reported by the State. The NRC staff also reviewed material events posted on the State's public website. The staff informed the Bureau that several events posted on their website appeared to be reportable material events (Texas Event numbers I-7941, I -7956, I -7995) and had not been reported to NRC. The Bureau agreed to follow-up on these events and provide event reports to the NMED contractor, where applicable. It is recommended that this item be reviewed at the next IMPEP review.

- c. Recommendation: The review team recommends that the Department (Bureau) prepare necessary supporting documentation identifying the bases for the licensing actions associated with reclamation plans for the three conventional mills.

Current Status: The Bureau is on track for developing the supporting documentation for the three conventional mills. All three mills have significant groundwater issues. Closure will be a long-term project. It is recommended that this item be reviewed at the next IMPEP review.

The status of the recommendation for NRC is summarized below.

Recommendation: The review team recommends that NRC, in coordination with the Agreement States, re-evaluate the two-person rule to assess the effectiveness of the intended outcomes, including experience from past events, and propose a strategy and rule interpretation that best achieves the goal of safety.

Current Status: NRC's working group composed of staff from NRC and Agreement States has completed its work and is in the process of preparing a report. The report was due to the management review board (MRB) by June 18, 2004. We understand that the report will contain several options for consideration by the MRB.

2. Strengths and Weaknesses of the Program

- a. Program strengths: The Bureau continues to have well trained, experienced, and dedicated staff members who are often called on as resources by both federal and other state agencies. The Bureau has excellent emergency response and investigation capabilities. The Bureau continues to have well-trained staff specifically dedicated to rulemaking activities, as well as an active and experienced Radiation Advisory Board.
- b. Program weaknesses: Staff recruitment and retention is a challenge for the Bureau. Bureau management recognizes that they have a salary issue that is affecting staff retention and have developed plans to address staffing issues. These initiatives are discussed in detail under Section 8.a. In addition, the State has mandated an FTE cap.

3. State Feedback on NRC's Program

The Bureau expressed concern about NRC interaction with States during emergency preparedness (EP) exercises at nuclear power plants. The NRC staff discussed the outreach activities with State personnel that Region IV has planned prior to these exercises. The Bureau provided a point-of-contact. During the State outreach activity for the upcoming South Texas EP exercise, the Chief of Region IV Response Coordination Branch met with the Bureau's contact to discuss the issues.

4. Status of the Program

- a. Staffing and training: The Bureau currently has 138 employees total and 17 vacancies. Of the 17 vacancies, there are 5 technical vacancies in the Radioactive Material Inspection Program, 1 technical vacancy in the Licensing Program, and 1 technical vacancy in the Uranium Mill Program. The Bureau currently has one inspector and three vacancies in the Houston field office. One of the Houston field office positions has been vacant since October 2000, the second position has been vacant since January 2003, and the third position has been vacant since March 2004. The Bureau has posted the vacancies, interviewed the candidates, and made selections, but cannot make offers because of the Statewide hiring freeze. In addition, the Bureau had a vacancy in the Midland/Odessa field office for more than 1-year. The Bureau stated that as long as all the staff positions are filled and staff members are trained in a timely manner, it is possible to keep up with the workload.
- b. Materials Inspection Program: The Bureau has approximately 1600 specific licenses. Bureau management informed the NRC staff that approximately 1300 of the licensees are inspected at frequencies equivalent to Priorities 1-3. The Bureau inspects some types of licenses more frequently than specified in NRC's Inspection Manual Chapter 2800 (IMC 2800). The NRC staff requested that the Bureau identify the number of Priority 1-3 licenses based on IMC 2800 criteria. The Bureau identified 934 licenses and identified 55 routine inspections that were currently overdue by more than 25 percent of the NRC frequency. Of the 55 overdue inspections, 38 were located in the Houston area.

The Bureau has issued 305 new licenses since the last IMPEP and identified 59 overdue initial inspections. Of the 59 overdue inspections, 23 were located in the Houston area and 6 were located in the Midland/Odessa area.

- c. Regulations and Legislative changes: The Bureau traditionally maintains a high standard of compatibility in the area of rules and regulations. They have taken innovative approaches when promulgating regulations, including getting input from the advisory board and stakeholders. Drafts of proposed rules are now noticed at the Bureau's website. The Bureau plans to hold a regulatory conference in September 2004, and has included public participation.

The NRC staff discussed the status of regulations and noted that the NRC provided comments on several proposed rules for which the State has not provided a response and/or a final revised rule incorporating NRC's comments. In addition, the Bureau indicated that they had previously provided updated information on the status of regulation to the 2000 IMPEP team that had not been incorporated into the STP State Regulation Status (SRS) sheet. State staff plans to provide an electronic update. STP's Regulations Coordinator will review and discuss discrepancies with State staff. The SRS sheet will be updated, as appropriate.

- d. Program reorganizations: The Texas Department of Health is undergoing significant reorganization changes. Twelve Texas agencies are being blended to create four departments under the direction of the Texas Health and Human Services Commission, effective September 2004. Bureau management indicated that the departments would be organized into functional units. The final organization has not been determined. However, we understand that they are considering establishing a licensing unit, an inspection unit, a policy and standards unit, and an enforcement unit. At this time, there are many uncertainties regarding the reorganization and its effect on the program.

The Associate Commissioner for Consumer Health Protection met with the NRC staff to discuss the impending reorganization. The Associate Commissioner gave his assurance that management is committed to the success of this reorganization in support of the Agreement.

- e. Changes in Program budget/funding: The Bureau has a budget of \$7 million per fiscal year. In the past, the Bureau has used salary savings to fund training of personnel. Bureau management indicated that this source of funding has been affected by some of the State's initiatives.

House Bill 3208 allows qualifying employees to retire during the first month of retirement eligibility and receive a retirement incentive payment equivalent to 25 percent of their annual salary. The agency's appropriation is then reduced by 35 percent of the retiring employee's average monthly salary times the number of months remaining in the biennium after the effective date of the retirement. The cost of the retirement incentives has been partially funded by deleting a Bureau position. The Bureau expects more retirements in fiscal year 2005.

The 6.8 percent salary increase for the technical staff was partially funded by deleting two additional Bureau positions.

As discussed during the last periodic, the Department was directed to consolidate administrative services by December 31, 2002. The costs associated with the new administrative overhead have been higher than expected.

5. Event Reporting

The status of the Bureau's event reporting was discussed in Section 1.b.

6. Response to Allegations

No allegations were referred by NRC to the State during the period.

7. Status of the following Program areas

- a. Sealed Source & Device Evaluation Program: The Bureau has an active SS&D program with five staff qualified as SS&D reviewers. During the 12-month period from May 2003 through April 2004, the Bureau completed 18 SS&D evaluations. Of the 18 evaluations, 4 were new, 9 were amendments, and 5 were inactivations.
- b. Uranium Recovery Program: The Bureau's uranium recovery program has a Deputy Director and three staff positions for technical assessment, a geologist and two engineers. One of the engineer positions has been vacant since November 2002. The uranium recovery program also has a Deputy Director and three staff positions for compliance and inspection. One inspector position has been vacant since January 2003.

The three conventional mill sites that were under reclamation continue to have groundwater issues. The Bureau has four in situ uranium licensees. The Alta Mesa site is still not in production. Uranium Resources' Vasquez sub-site is not in production until financial security is posted. The resources from this site will be used to finance the groundwater restoration at their Kingsville Dome and Rosita sub-sites. Reclamation continues at the COGEMA and Everest sites. Additionally, the staff has conducted several meetings with Waste Control Specialists to discuss issues involved in licensing a disposal facility for uranium byproduct waste at their site in Andrews County, Texas. The staff expects to receive an application soon.

8. Information exchange and discussion

- a. Current State initiatives: The Bureau was authorized to give a 6.8 percent merit award (effective April 1, 2004) to the staff in an effort to retain the current staff. In addition, management is attempting to implement a new health physics classification that will align the staff salaries with the current engineering salary scale. Currently, the Bureau's technical staff is classified as Environmental Specialists with a salary cap three steps below the Engineering salary cap. Bureau management is discussing the benefits of an intern program as an effort to increase the number of qualified staff.

The Bureau is also involved in developing a rule for clearance and rules for disposal of low-activity radioactive materials in a RCRA Title C landfill.

- b. Large, complicated or unusual authorizations: The Bureau currently has six pool irradiators. The staff also have been involved in two major decommissioning actions and authorized a waste processing pilot.
- c. State's mechanisms to evaluate performance: The Bureau continuously audits performance by conducting peer reviews of licensing actions and SS&D reviews. The Health Physics Coordinators conduct a technical review of all inspection reports. Management monitors timeliness by computer tracking of licensing actions and generates monthly report data. The management uses a "watch list" to coordinate key compliance, enforcement and licensing actions. In addition, the rulemaking staff project and manage their workload using a 6-month rule plan.

9. Schedule for the next IMPEP review

The next IMPEP is tentatively scheduled for September 2005.