UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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ARLINGTON, TEXAS 76011-4125

December 7, 2010

Rusty Lundberg, Director
Utah Division of Radiation Control
195 North 1950 West
Salt Lake City, UT 84116

SUBJECT: REPLACE THE ENCLOSURE TO LETTER DATED DECEMBER 2, 2010 (ML103360492), SUMMARY OF PERIODIC MEETING WITH UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY HELD ON NOVEMBER 4, 2010, WITH THE ENCLOSURE TO THIS LETTER

Dear Mr. Lundberg:

Please replace the enclosure to the letter dated December 2, 2010, ADAMS Accession Number ML103360492, with the enclosure to this cover letter regarding the summary of periodic meeting with Utah Department of Environmental Quality held on November 4, 2010. The changes to the enclosure incorporate your comments to the periodic meeting minutes that were received after the letter was issued. Thank you for your review and comments.

If there are any questions, please contact me at 817-860-8116.

Sincerely,

Rachel S. Browder

Rachel S. Browder, *CHP*
Regional State Agreements Officer

Enclosure:
Utah Periodic Meeting Summary with comments

ENCLOSURE

Internal distribution via e-mail:
Roy Caniano, D:DNMS
Charles Cain, DD:DNMS
Robert Lewis, FSME
Terry Reis, FSME
James Luehman, FSME
Duncan White, FSME
Rachel Browder
Randy Erickson
Janine Katanic, FSME
Monica Orendi, FSME
Karen Meyer, FSME
Michelle Beardsley, RI

Revised

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ADAMS: ☐ No ☒ Yes	☒ SUNSI Review Complete	Reviewer Initials: rsb RSB
	☒ Publicly Available	☒ Non-Sensitive
	☐ Non-publicly Available	☐ Sensitive

RIV:RSAO:DNMS			
RSBrowder;dlf			
RSB			
12/ 7 /10			

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UTAH PERIODIC MEETING SUMMARY
Date of Meeting: November 4, 2010

Attendees

NRC	UTAH
Rachel Browder, RSAO	Rusty Lundberg, Division Director
Janine Katanic, FSME	Craig Jones, Radioactive Materials & X-Ray
	Loren Morton, Geotechnical Support
	John Hultquist, Low Level Radioactive / Uranium Mills
	Gwyn Galloway, Health Physicist
	Mario Bettolo, Health Physicist
	Phillip Griffin, Health Physicist

DISCUSSION:

The Utah Agreement State program is administered by the Division of Radiation Control (the Division) located in the Department of Environmental Quality (the Department). The Utah program regulates approximately 200 specific licenses authorizing agreement materials. The Division also regulates three uranium mill sites and a commercial 11e.(2) disposal facility and has regulatory responsibility for a low-level radioactive waste (LLRW) disposal site.

The last full IMPEP Review was conducted during the week of June 11-15, 2007. The team reviewed the five common performance indicators and three of the four non-common performance indicators. The three non-common performance indicators reviewed were (1) Compatibility Requirements, (2) Low-Level Radioactive Waste Disposal Program, and (3) Uranium Recovery Program. The fourth non-common performance indicator is Sealed Source and Device Evaluation, which was returned to NRC on June 1, 1996.

The IMPEP review team identified two of the performance indicators as *satisfactory, but needs improvement*. These two indicators were Technical Quality of Incident and Allegation Activities and Uranium Recovery Program. Utah's performance for the remaining six performance indicators reviewed was found *satisfactory*. The MRB agreed with the review team's recommendation that the Utah Agreement State Program was adequate to protect public health and safety and compatible with NRC's program. Additionally, the MRB requested that a follow-up IMPEP review be conducted in one year to focus on the two performance indicators that were identified as *satisfactory, but needs improvement*.

The follow-up IMPEP Review was conducted the week of July 15-18, 2008. The review team evaluated the common performance indicator, Technical Quality of Incident and Allegation Activities, and the non-common performance indicator, Uranium Recovery Program. The review team recommended, and the MRB agreed, that both indicators be found *satisfactory* and the two recommendations that had been opened during the 2007 IMPEP review were subsequently closed. The Utah Agreement State Program was found adequate to protect public health and safety and compatible with NRC's program. Based on the recommendations by the review team, the MRB had determined that the next full IMPEP review take place in approximately 3 years, with a periodic meeting scheduled for January 2010. Due to retirements for personnel from each of our agencies and conflicting schedules, the periodic meeting was delayed until this time. The purpose of this periodic meeting is to fulfill that requirement in order

to evaluate the continued implementation of the Agreement State Program. The review team initiated the meeting with a summary of the IMPEP review process, including the purpose and scope of the review, the list of team members for the next Utah program review, how the process of reviewing the draft IMPEP report proceeds, and the final MRB meeting.

Other topics covered at the meeting included:

Program Strengths: The Division has a stable workforce with approximately 60-80 percent of the staff having over 20 years experience in the program. The depth and knowledge of the staff is a major strength of the program. The new Division Director expressed that he is impressed with the Division's quality of work products and the staff's commitment and dedication. The Division expressed that the staff's skill-sets support the requirements of the Division.

The Division's development and implementation of inspection modules for the uranium recovery program provides a methodology to ensure that all elements of the uranium program are inspected every year. The Division indicated that they have been successfully implementing the inspection modules and, as a result, there is no backlog in the inspection program.

The Department has several methods to develop employees. These include formalized programs such as a certified public management program and internal leadership development program, as well as a small group leadership skills program. In addition, the Division is implementing knowledge management transition and succession planning. For example, implementation of regulation reviews have been performed by different members of the staff so each is familiar with the process.

Program Weaknesses: The Division identified the transition of the technical IT support staff from within the Department to the overall state office as being a weakness. The transition of IT support to the state office has reduced responsiveness and comprehensive support by the IT staff for the Division's custom databases. The Division is unsure how their custom databases would support the anticipated web-based licensing that the NRC is developing.

The Division also identified that the longevity of many of the staff may be a potential concern because some of the staff's eligibility for retirement may occur at the same time.

Feedback on NRC's Program

The Division indicated that they appreciated the good support provided by NRC Region IV and the communications between the two agencies.

The Division is unsure how their custom computer databases will be capable of supporting the web-based licensing that the NRC is developing. However, the Division indicated that, if the NRC could provide the required format and specific data-fields necessary to transfer data to a central platform, they may be able to support the request to transfer their data.

The Division's licensees have indicated that it is cumbersome to get credentialed for NSTS. The Division stated in part that the NRC should not consider tracking lower-tier sources until all of the issues associated with the current system are resolved. The Division also stated that the NSTS quarterly calls are very helpful.

Staffing and Training

At the time of the periodic meeting, the Division staffing was approximately one staff position for every 50 licenses (1:50). The Division indicated there was no backlog on core inspections and licensing actions were current. The Radioactive Materials Section has one manager and four technical staff. The Low-Level Waste Section and Uranium Recovery have one manager and seven technical staff; however, one staff member supports the radon program. In addition, the Geotechnical Support Section has one manager, four hydrologists, and two environmental engineers. The Division contracts technical support for permitting and licensing actions for the low-level radioactive waste facility. Compliance actions and enforcement cases are not contracted, but are processed by the Division.

During the review period, there was a reduction in force that eliminated one vacant engineering position and a health physics position. In addition, one of the health physics staff in the Radioactive Materials Section is on extended medical leave. The Division has borrowed engineering services from the Division of Solid & Hazardous Waste to support the review and issuance of the mixed waste RCRA permits.

The Division is anticipating the hiring of four additional staff, which would reduce the use of consultants for permitting and licensing actions and help to support the Radioactive Materials Section. The approval to start the recruitment process is still pending.

Program Reorganizations

DEQ named Rusty Lundberg as the new director of the Division, replacing Dane Finerfrock who retired at the end of June 2010. Mr. Lundberg began his appointment on July 1, 2010. He has been with DEQ for 25 years, where he has been the branch manager overseeing solid waste for the Division of Solid and Hazardous Waste and most recently serving as the manager of the Energy and Sustainability Group, where he represented Utah on The Climate Registry and participation in the Western Climate Initiative. There were no other reorganizations within the Division during the review period. However, as a result of the recent effort by the Division to analyze and evaluate opportunities for business process improvement utilizing a Lean Six Sigma approach, the potential for implementing reorganization recommendations is under consideration. Additionally, the implementation of similar recommendations regarding staffing may influence the level of outside technical consulting services used by the Division.

Changes in Program Budget/Funding

The Division's funding for the Radioactive Materials section comes from the general fund fee-based category. There is no change anticipated in the funding for the Radioactive Materials section.

The Division's funding for the Low-Level Waste, Uranium Recovery, and Geotechnical Support sections comes from the Environmental Quality Restricted Account (EQRA). The EQRA is a statutory account that is funded through disposal fees paid by operators of commercial solid, hazardous, and radioactive waste facilities and municipal solid waste landfills. There have typically been enough funds to account for fluctuations in the waste volumes; however, during FY10, the Department worked with stakeholders to develop legislation that passed during the 2010 General Session of the Utah Legislature (H.B. 331) to address necessary changes in the funding mechanisms that will be implemented during the next fiscal year. The fees specifically associated with the Division of Radiation Control have been amended by eliminating the current statutory disposal fee rate and replacing it with an annual or "flat fee" that would not be reflective of, or dependent on, the waste volumes of the commercial disposal facility.

Materials Inspection Program

The Division utilizes more restrictive priority inspection criteria than the criteria established in NRC Manual Chapter 2800. At the time of this periodic meeting, the Division reported there were 12.4% in overdue inspections, based on the Program's more restrictive criteria. However, it is anticipated that the Division will meet the NRC inspection criteria during the next IMPEP review.

Materials Licensing Program

The Division performed prelicensing visits as appropriate and ensured that increased controls were in place prior to issuing new licenses for Category 2 and above facilities. The Division implemented the increased controls and fingerprinting orders by license conditions.

Regulations and Legislative Changes

The State is up to date on regulation amendments currently required for compatibility, except for the following amendment package listed below (RATS ID 2007-03). The state submitted the proposed regulation package to the NRC. The NRC documented their review response by letter dated September 28, 2010, which identified two comments to the proposed rule. During this periodic meeting, the state expressed that it cannot promulgate regulations that it cannot enforce and therefore cannot incorporate one of the comments into their final rule. As a result of the discussion during the periodic meeting, the review team will look into the comments and discuss the matter further with the state.

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

Event Reporting, Including Follow-up and Closure Information in NMED

During this review period, which encompasses July 18, 2008, to the present, the State reported 19 events to the NRC Operations Center, which were also updated to NMED. For this fiscal year, the Division had six events and two have been closed.

Response to Incidents and Allegations

During the IMPEP review in 2007, there was a recommendation associated with conducting on-site reviews of incidents. During the follow-up IMPEP review in 2008, the Division demonstrated that the policy changes for documenting the decision to conduct an on-site investigation as part of their incident response activities was effective; therefore, this recommendation was closed. In addition, the performance indicator was found satisfactory.

During this review period, the Division responded to several incidents and conducted reactive inspections. Two reactive inspections were conducted within one month prior this periodic meeting. The staff members who performed the two reactive inspections provided a detailed account of their actions in response to the incidents which involved radiography cameras. It was also noted that, as a result of the staff's training of a State Trooper, who was the first responder in the first incident, the training was successfully used during the second incident, where the same State Trooper was also the first responder. As a result of the training, during the second incident the State Trooper knew where to find the survey meter in the truck and how to ensure that the radiography source was intact and secure inside the radiography camera, which had been thrown 2-3 feet from the truck. Based on the training he had received, he knew that the area was safe, that the highway did not have to be closed, and who to contact immediately. The Division was continuing to process these two incidents; however, it was evident that they were following their processes for documenting decisions and performing reactive inspections.

The Division indicated that they document and follow up on allegations which are submitted in writing to the Division. This process is in accordance with the Division's policy. The Division indicated that this policy was developed as a result of receiving numerous telephone calls of alleged violations in which the caller would choose not to document the concern and submit it to the Division. During a discussion of this policy, the Division noted; however, that on several occasions they responded when it appeared there may be a health or safety concern related to the called-in allegation.

Emerging Technologies

The Division did not discuss any emerging technologies during the periodic meeting.

Large, Complicated, or Unusual Authorizations for use of Radioactive Materials

The Division provided an example of a complicated enforcement case. A licensee was no longer using large quantities of radioactive materials; however, the licensee had not initiated decommissioning within the required 2-year limit. The licensee had not used the large quantity sealed sources for approximately 15 years. The Division had issued a DEQ Order to the licensee, requiring the licensee to dispose of the sources. However, the licensee was not complying with the DEQ Order. A State District Court Judge issued an order the day before this periodic meeting, requiring the licensee to comply with the initial DEQ Order within 120 days. The Division noted that some of the sources were Pu-238, Am-241, and Ba-133. The latter would require disposal at the Hanford facility.

Current State Initiatives

The Division used lean six sigma as a method to identify the depth of knowledge within the discipline areas of Low-Level Radioactive Waste and Geotechnical Services. This methodology visually displayed the discipline areas that were covered by the staff and also displayed the discipline areas that were lacking by the staff. The Division indicated that this tool is one method to identify areas of training to ensure development of employees and knowledge transfer management and promote efficiency in the sections. The tool appeared to be an efficient method for management to identify potential areas for licensing action process improvement, training, and development.

Current NRC Initiatives

Dr. Janine Katanic discussed ongoing Office of Federal and State Materials and Environmental Management Programs (FSME) initiatives with the State of Utah representatives. This included a brief review of the latest FSME letters and RCPD letters that requested a review and response from the Agreement States. In addition, Dr. Katanic discussed the national source tracking system, web-based licensing, and security rulemaking.

CONCLUSIONS:

The Utah Agreement State Program remains a strong, stable program with good management support. The technical staffing level for the Program is adequate, but vulnerable with any potential reductions in force or retirements. The Division is aware of this issue and is implementing succession planning and providing justification for four additional staff members.

Schedule for the Next IMPEP Review

NRC staff recommends that the next IMPEP review be held, as currently scheduled, in FY 2011.