

August 10, 2000

Mr. Murray G. Sagsveen
State Health Officer
North Dakota Department of Health
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0200

Dear Mr. Sagsveen:

As you know, the Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the evaluation of Agreement State programs. Enclosed for your review is the draft IMPEP report which documents the results of the follow-up review conducted, via telephone, by an NRC team on July 12, 2000.

The team reviewed, in detail, the performance indicator of concern identified during the 1999 IMPEP review, Status of Materials Inspection Program. Mr. James Lynch, Region III State Agreements Officer, and Mr. James Myers, Office of State and Tribal Programs were the team members for the follow-up review. The review team's findings were discussed with Mr. Jeffery Burgess and your staff on the day of the review.

The review team found that the inspection program has improved. The team concluded that the program has responded to and resolved two of the three 1999 review recommendations for the performance indicator, Status of Materials Inspection Program. The third recommendation, relating to reciprocity inspections, remains open as corrective actions are not yet complete.

The team's proposed recommendations are that the Status of Materials Inspection Program indicator be found satisfactory and that the North Dakota Agreement State program be found adequate to protect public health and safety and compatible with the NRC program.

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the draft team report for review prior to submitting the report to the Management Review Board. We welcome your comments on the draft report. If possible, we request comments within four weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner that will be responsive to your needs.

The team will review the response, make any necessary changes to the report and issue it to the MRB as a proposed final report. The MRB will consider the review team's recommendations and your comments and make a final decision as to the North Dakota Agreement State program's overall adequacy and compatibility. At this time, we do not plan to schedule a MRB meeting.

Murray G. Sagsveen

- 2 -

August 10, 2000

If you have any questions regarding the enclosed report, please contact me at (301) 415-3340 or James Lynch at (630) 829-9661.

Sincerely,

/RA by Frederick Combs for/
Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

cc: Jeffery L. Burgess, Director
Air Quality Division

Kenneth W. Wangler, Manager
Radiation Control Program

INTEGRATED MATERIALS PERFORMANCE EVALUATION
PROGRAM (IMPEP) FOLLOW-UP REVIEW OF
THE NORTH DAKOTA RADIATION CONTROL PROGRAM

July 12, 2000

DRAFT REPORT

U. S. Nuclear Regulatory Commission

1.0 INTRODUCTION

This report presents the results of the follow-up review of the North Dakota Department of Health, Air Quality Division, Radiation and Asbestos Control Program (RCP), conducted on July 12, 2000. In early 2000, the Division of Environmental Engineering was renamed the Air Quality Division, however, the duties of the Division remain the same. This follow-up review was directed by the Management Review Board (MRB) based on the results of the April 13-16, 1999 Integrated Materials Performance Evaluation Program (IMPEP) review. The MRB requested that a follow-up review of the common performance indicator, Status of Materials Inspection Program, be conducted in one year based on the "satisfactory with recommendations for improvement" finding for this indicator. The follow-up review also included evaluation of actions taken by the State to address the three recommendations made during the April 1999 IMPEP review involving this indicator.

The follow-up review was conducted, via telephone, by a review team consisting of two technical staff members from the Nuclear Regulatory Commission's (NRC) State and Tribal Programs and Region III offices. Team members are identified in Appendix A. The follow-up review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of a Final General Statement of Policy," published in the Federal Register on October 16, 1997, and the November 5, 1999, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program."

At the time of the follow-up review, the North Dakota program regulated approximately 70 specific licenses. In preparation for the follow-up review, the RCP submitted an update letter, dated July 5, 2000. A copy of the letter is included in Appendix B of this report.

The team's approach for conducting the follow-up review consisted of: (1) examination of the RCP's update letter; (2) in-depth review of the program indicator, Status of Materials Inspection Program, for the period of April 17, 1999 - July 12, 2000; (3) evaluation of the RCP's actions in response to the three recommendations, from the previous review, involving this indicator; and (4) interviews with staff and management to answer questions or clarify issues. Preliminary results were discussed with the RCP management on July 12, 2000.

Section 2 below discusses the results of this follow-up review of the North Dakota program for the common performance indicator, Status of Materials Inspection Program. Section 3 summarizes the follow-up review team's findings for this review.

2.0 COMMON PERFORMANCE INDICATOR, STATUS OF MATERIALS INSPECTION PROGRAM

During the follow-up review, the team evaluated actions taken by the RCP in response to the recommendations for improvement involving the indicator, Status of Materials Inspection Program noted during the 1999 review.

Recommendation 1:

The review team recommends that the RCP management devote additional attention to a "pro-active" review of the current inspection tracking systems, and adjust staff priorities accordingly to ensure core licensees are inspected at the required intervals.

Current Status

Program management appropriately adjusted staff priorities which resulted in a zero backlog inspection program. The computerized tracking system is being used to ensure that managers are fully aware of the inspection program status.

Based on the follow-up review, the team considers this recommendation closed.

Recommendation No. 2

The review team recommends that the RCP continue their efforts to complete inspections of high priority reciprocity licensees in accordance with the Inspection Manual Chapter (IMC) 1220.

Current Status

As was noted in Section 2 of this report, inspection of reciprocity licensees is planned to be intensified in the next several months. This area will be revisited during the next Periodic Meeting with North Dakota.

Based on the follow-up review, the team considers this recommendation open.

Recommendation No. 3

The review team recommends that the RCP management continue to provide additional oversight to ensure inspection findings (letters of noncompliance) are communicated to licensees in a timely manner, and that licensee responses are evaluated promptly upon their receipt by the RCP.

Current Status

Inspection findings are now communicated to licensees in a timely manner and licensee responses are promptly reviewed. Inspection staff are aware of the priority of these communications.

Based on the follow-up review, the team considers this recommendation closed.

2.1 Status of Materials Inspection Program

The review team focused on four factors in evaluating this indicator: inspection frequency; overdue inspections; initial inspection of new licensees; and timely dispatch of inspection findings to licensees. The review team's evaluation is based on the RCP's update letter and attached computer printouts, and interviews with program staff.

The RCP indicated that inspection frequencies for each type of license were the same as those listed in NRC's IMC 2800, with only one exception. The State assigns a Priority 4 frequency for licensees authorized for portable nuclear gauging devices. The RCP's experience identified that portable gauges in North Dakota, especially those used in oil field operations, are often used in perilous environments, necessitating increased RCP oversight. The RCP's frequency is

more restrictive than the frequency specified for Priority 5 licenses in IMC 2800. The review team also noted that the RCP has utilized their written procedures for extension or reduction of inspection intervals, based upon licensee performance.

Since the last review, the RCP completed 44 inspections, including the two core (as defined in IMC 2800) inspections which were overdue at the time of the last review. All core inspections during the review period were performed in a timely manner and no inspections are overdue at this time. Since the last review, the RCP has better utilized its tracking system and has renewed emphasis on timely inspections. They also changed the inspection scheduling procedure, targeting the inspection due date rather than the 25% window.

Inspections of licensee operations in the field, as opposed to office inspections, are preferred. If a decent opportunity is available to perform a field inspection, it is done. Three field inspections were performed since the last review.

The staff uses a computer database program to track inspection due dates. This data is provided to inspection staff and management on at least a monthly basis to monitor upcoming inspections. Both inspector/reviewers use the tracking system to plan inspections and track license actions. The Program Manager may request a tracking update whenever desired. Twenty inspections are due between June 2000 and November 2001. The follow-up review team concluded that the database tracking system has been effectively used by the RCP.

Two new licenses were issued since the last review and both were inspected within six months as required by the State's procedures that are based on IMC 2800. Consistent with IMC 2800, a 25% window is not used for initial inspections.

The review team also evaluated the status of reciprocity inspections. The previous review noted that the RCP did not meet its goals, outlined in NRC's IMC 1220, for higher priority reciprocity inspections. Since the last review, the RCP has conducted only one Priority 1 reciprocity inspection of the 23 licenses granted reciprocity. At the time of the follow-up review, nine reciprocity licensees currently working in the State. RCP plans to inspect these licensees at the earliest opportunity. A breakdown of licensees granted reciprocity since the last review is as follows:

Priority 1	7 companies, 3 of which are currently in North Dakota
Priority 2	None
Priority 3	5 companies, 3 of which are currently in North Dakota
Priority 4	7 companies, 3 of which are currently in North Dakota
Priority 5	None
Priority 6	4 companies, none currently in North Dakota

The Program Manager stated that the inspection and licensing of the State's specific licenses has been the priority to this point, but now that they are caught up in those areas, more attention will be devoted to reciprocity inspections. The IMC 1220 goals can still be met for the year based on the ongoing work by reciprocity licensees in North Dakota.

The RCP has a written policy that establishes inspection report timeliness goals consistent with NRC's IMC 0610. The State's goal is to dispatch written findings of inspections to licensees within 30 days after completing an inspection. The last review identified that approximately one

third of core inspection findings were not sent to licensees in a timely manner. Since that review, of a total of 44 inspections, only 3 licensee letters were issued past the 30-day goal. All letters were issued within 50 days of the inspection. One of the inspection letters was late due to escalated enforcement, another due to a licensing priority and the third was caused by a delay in receipt of information from a licensee which had been requested during the inspection.

The RCP considered the use of field inspection forms, like NRC's 591 form, but instead, has begun development on a computerized inspection report, which can be formulated during an inspection, using a laptop computer, and issued to the licensee at the inspection exit meeting.

The last review also noted that the RCP's review of licensee responses to letters of noncompliance were not always performed in a timely manner. The RCP reported that all licensee responses received since the last review were properly evaluated within the 30-day time limit. The Program Manager indicated that increased management attention to this area was implemented in October 1998 and it has not been a problem since.

The review team recommends that North Dakota's performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

3.0 SUMMARY

The follow-up review team found North Dakota's performance in responding to and resolving the three recommendations involving the common performance indicator, Status of Materials Inspection Program, to be acceptable.

As noted in Section 2 above, the review team concludes that the inspection program has shown improvement since the 1999 IMPEP review. The review team recommends that North Dakota's performance with respect to the indicator, Status of Materials Inspection Program, be changed from the April 1999 IMPEP review finding of "satisfactory with recommendations for improvement" to "satisfactory." The review team recommends that the MRB continue to find the North Dakota's program to be adequate to protect public health and safety and compatible with NRC's program.

The follow-up review team recommends that the North Dakota Agreement State program receive a full IMPEP review four years from the 1999 full IMPEP review. The team suggests that the next Periodic Meeting be scheduled for Fall 2001.

LIST OF APPENDICES

Appendix A	IMPEP Follow-up Review Team Members
Appendix B	North Dakota's Update Letter Dated July 5, 2000

APPENDIX A

IMPEP FOLLOW-UP REVIEW TEAM MEMBERS

Name	Area of Responsibility
James Lynch, Region III	Team Leader Status of Materials Inspection
James Myers, STP	Status of Materials Inspection

APPENDIX B

**LETTER TO JAMES L. LYNCH, NRC FROM KENNETH W. WANGLER, NORTH DAKOTA
DATED JULY 5, 2000**

ML003733944



NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section

Location:
1200 Missouri Avenue
Bismarck, ND 58504-5264

Fax #:
701-328-5200

Mailing Address:
P.O. Box 5520
Bismarck, ND 58506-5520

MEMO TO : James L. Lynch
Regional State Agreements Officer
U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle IL 60532-4351

FROM : Kenneth W. Wangler *KW*
Manager
Radiation Control Program
Air Quality Division

RE : The Status of North Dakota's Radioactive
Material Inspection Program for the IMPEP
Follow-up Review on July 12, 2000.

DATE : July 5, 2000

During the U.S. Nuclear Regulatory Commission (NRC) April 1999 Integrated Materials Performance Evaluation Program (IMPEP) review, the primary concern with North Dakota's Radioactive Material (RAM) inspection program was timeliness. There were several core inspections that had gone beyond the 25% overdue window during the review period and two that remained outside the window at the time of the NRC review. These two were completed by May 19, 1999. Since that time no core inspections have gone past the 25% overdue window. As of this review date, the oldest inspection is due on June 22, 2000. A previous attempt by Radiation Control Program (RCP) staff failed to accomplish the inspection due to the Licensee not being available.

During NRC's April 1999 review there were also timeliness issues concerning length of response time from the inspection until the first letter to the Licensee. The state has established a 30-day maximum time limit for the length of time that should be allowed to pass between the inspection and the first written correspondence to the licensee or any follow-up correspondence to a licensee. Since October 1998, three inspections have gone over 30 days from the inspection until the first correspondence. None have gone over 30 days for any subsequent responses. The three that exceeded 30 days are as follows. One resulted in a Notice of Violation followed by a substantial penalty. The magnitude of information that had to be gathered following the inspection made it difficult to meet the

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30-day deadline. Multiple parties had to be contacted including local law enforcement and medical personnel. Telephone contact was made with Licensee management as soon as practical (within 1 or 2 days) after the inspection and there were numerous telephone exchanges in the days preceding the first correspondence. The NOV was sent 41 days after the inspection. The second response exceeding 30 days resulted from a Licensee (Trinity Medical Center) requesting enhanced license amendment activity through a State Legislator and Department Management. This resulted in the staff being consumed with processing the license amendment and failing to complete their inspection report (Jamestown Hospital) within the 30 days. The enhanced license request came two days after the staff had completed the inspection. The initial response was sent 37 days after the inspection. Discussions were held within the program and the importance of the 30 day limit was reemphasized. The third response that exceeded 30 days resulted from a licensee not submitting information requested during the inspection. The inspector was waiting on leak test results prior to closing out their report.

While timeliness is the central issue surrounding the need for a follow-up review, according to a June 23, 2000 letter, there appears to be several other issues the NRC would like to consider during the review. These are addressed below:

1. Inspection frequency; the state has the same frequency as the NRC for all types of licensees except portable gauge. NRC has a 5-year inspection frequency while the state has a 4-year inspection frequency. The state feels portable gauges represent a greater danger to public health and safety than fixed gauges and feels the increased inspection frequency is warranted. This should not be a concern to NRC since the state requirement is more stringent than NRC.
2. Reciprocity inspections; during the review period, one reciprocity inspection was conducted. The state will continue to try to inspect reciprocity licensees in accordance with IMC 1220. The state addressed this issue at length in their June 7, 1999 response to NRC's draft IMPEP report.
3. Field inspections; during the review period, three field inspections were conducted.
4. Initial inspections; during the review period, two initial inspections were conducted.

A summary sheet providing RCP inspection statistics is attached.

KWW:gsh

Attach:

xc: James Myers, U.S. NRC

ND Radiation Control Program

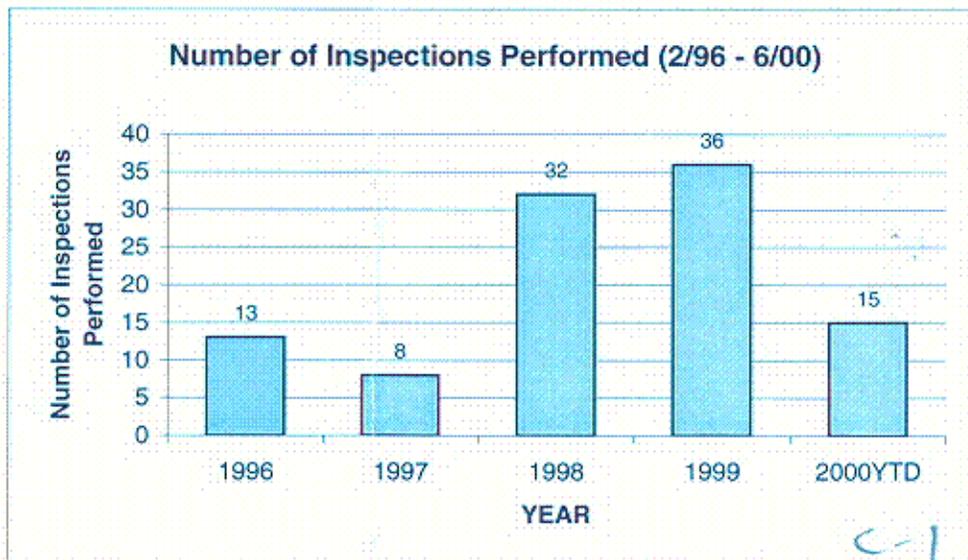
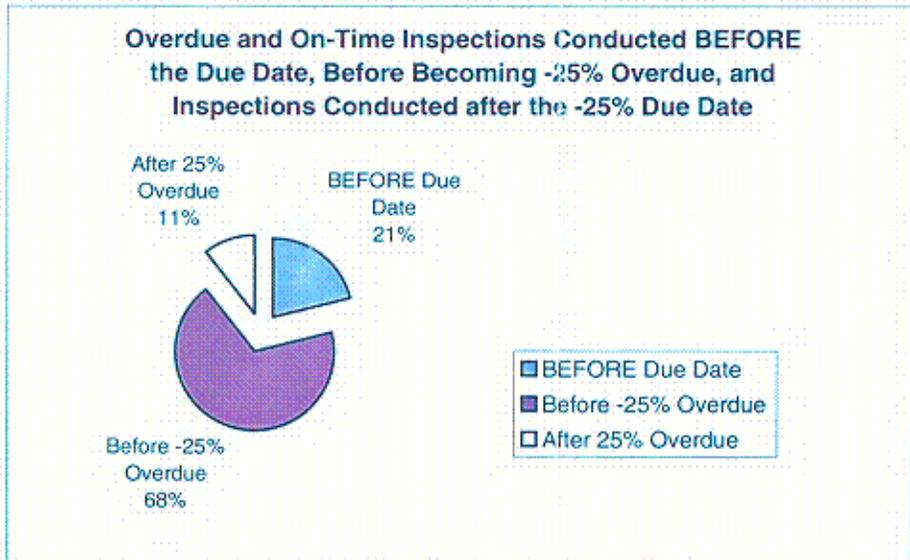
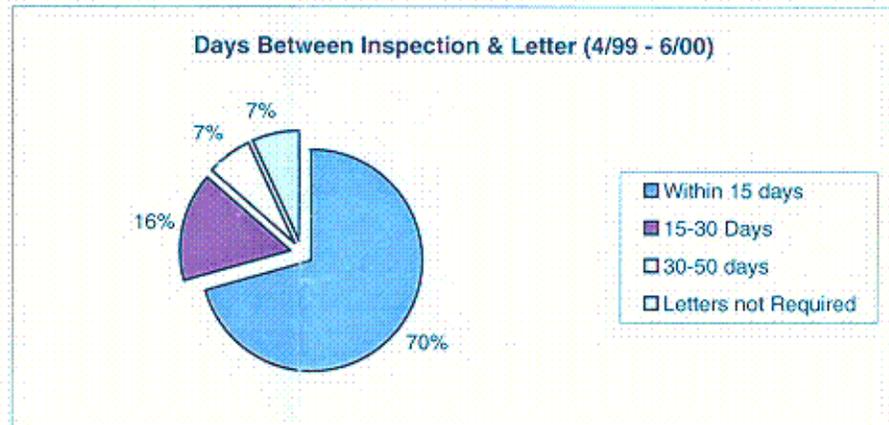
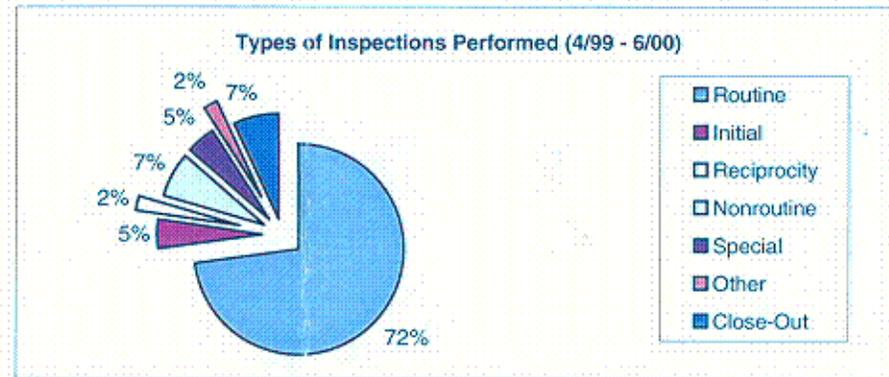
Total number of Inspections =	44
Number of Routine Inspections of Licensee =	32
Number of Initial Inspections Performed =	2
Number of Reciprocity Inspections =	1
Number of Nonroutine Inspections =	3
Number of Special Inspections =	2
Number of Other Inspections =	1
Number of Close-Out Inspections =	3

Average Days Between Inspection and 1st Letter to Licensee =	13.4
Maximum Number of Days Between Inspection and Letter =	48
Minimum Number of Days Between Inspection and Letter =	3

Number of Letters Sent Within 15 Days of Inspection =	31
Number of Letters Sent Within 30 Days of Inspection =	7
Number of Letters Sent Between 30-50 Days of Inspection =	3
Letter not Required Following Inspection =	3

Total Number of Routine & Initial Inspections =	34
Average Percent Overdue at Time of Inspection =	-8.47%
Maximum Percent Overdue at Time of Inspection =	-46.9%
Minimum Percent Overdue at Time of Inspection =	26.83%

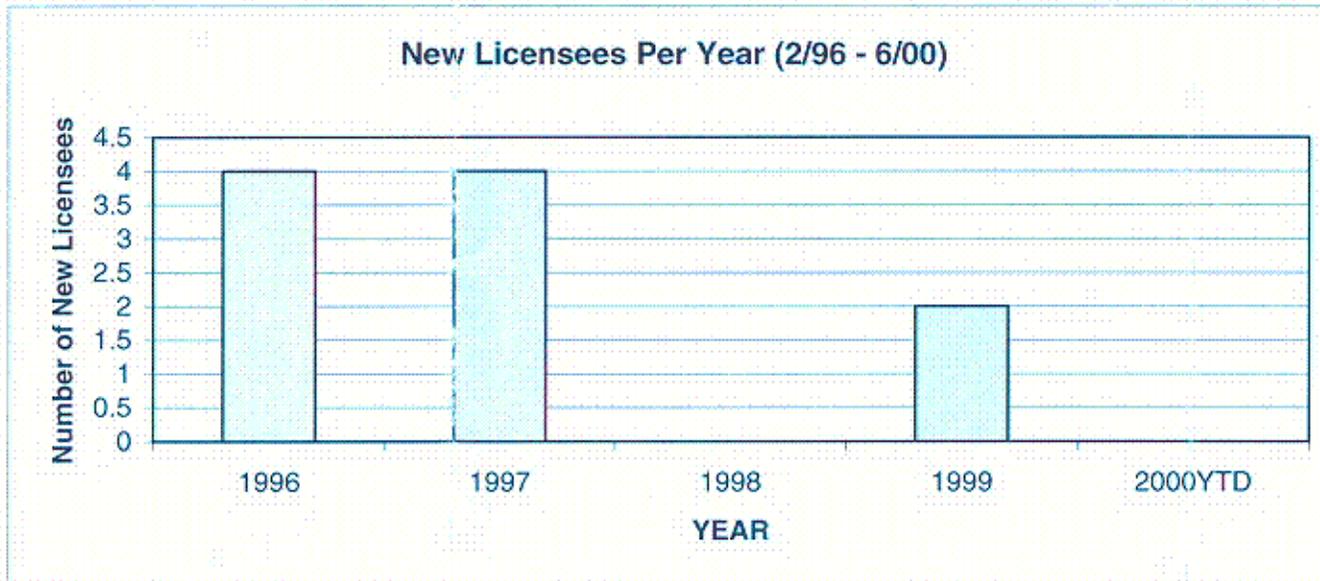
Number of Inspections Conducted BEFORE Due Date =	8
Number of Inspections Conducted BEFORE -25% Overdue =	26
Number of Inspections Conducted after -25% Due Date =	4



ND Radiation Control Program

New Licensee	Type	License Issued	Initial Inspection	Months to 1st Inspection
C&J's Nondestructive Testing, Inc.	IR	7/30/99	1/21/00	5.75
Heart Institute of North Dakota	ME	8/24/99	2/8/00	5.52

Number of New Licensees Since 4/99 = 2
 Inspections Performed within 6 months of Licensure = 2
 Ave. Number of Months Between Licensure & Inspection = 5.63



C-2

ND Radiation Control Program

[Sorted by Inspection Due Date]

LICENSEE NAME	TYPE	Inspection Due	Priority	% Due
T & K INSPECTION, INC.	IR	6/22/00	1	-1.10%
MIDWEST INDUSTRIAL X-RAY, INC.	IR	7/8/00	1	3.29%
UNIVERSITY OF NORTH DAKOTA	RD	10/2/00	2	13.42%
ST. JOSEPHS HOSPITAL AND HEALTH CENTER	ME	10/28/00	3	11.32%
C & Js NONDESTRUCTIVE TESTING, INC.	IR	1/21/01	1	57.22%
BNI COAL, LTD.	WL	1/30/01	3	19.90%
MEDCENTER ONE HEALTH SYSTEMS	ME	2/10/01	3	20.90%
MATERIAL TESTING SERVICES, INC.	MD	2/26/01	4	16.77%
MAYO CONSTRUCTION COMPANY, INC.	MD	3/1/01	4	16.97%
CENEX PIPELINE, L.L.C.	LG	3/6/01	5	13.85%
EWER TESTING & INSPECTION, INC.	IR	3/10/01	1	70.36%
UNIMED MEDICAL CENTER	ME	4/1/01	3	25.46%
AMERICAN CRYSTAL SUGAR COMPANY, DRAYTON	LG	5/21/01	5	18.02%
NUCLEAR IMAGING, LIMITED	MN	5/28/01	2	46.00%
TRINITY HEALTH	ME	7/29/01	3	
DMS IMAGING, INC.	MN	9/2/01	2	
ALTRU HOSPITAL	ME	9/9/01	3	
APPLIED ENVIRONMENTAL SCIENCES, INC.	PG	10/16/01	4	
GREAT RIVER ENERGY - STANTON STATION	LG	11/12/01	5	
DAKOTA HEARTLAND HEALTH SYSTEM	ME	11/24/01	3	

Abbreviations	
IR	Industrial Radiography
LG	Level Gauge (Fixed)
MD	Moisture/Density
WL	Well Logging
PG	Portable Gauge
ME	Medical
MN	Mobile Nuclear
ID	Irradiator
LU	Lab Use
RD	Research & Development
RG	Regulatory
TC	Testing & Calibration

[Inspections Due For the Period: June 22, 2000 to November 30, 2001]

Total Number of Inspections Due in this Period = 20
 Inspections Due Before January 1, 2001 = 4
 Inspections Due After January 1, 2001 = 16

 Current Number of Late Inspections = 1
 Inspections Over 25% Overdue = 0

License Type	Number of Inspections Due
IR	4
LG	3
MD	2
WL	1
PG	1
ME	6
MN	2
ID	0
LU	0
RD	1
RG	0
TC	0

ATTACHMENT

Letter from Murray G. Sagsveen
North Dakota's Response to Draft IMPEP Report

ADAMS: ML003748698



NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section

Location:
1200 Missouri Avenue
Bismarck, ND 58504-5264

Fax #:
701-328-5200

Mailing Address:
P.O. Box 5520
Bismarck, ND 58506-5520

August 29, 2000

Paul H. Lohaus, Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington D.C. 20555-0001

Dear Mr. Lohaus:

The North Dakota Department of Health (Department) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) August 10, 2000 draft, Integrated Materials Performance Evaluation Program (IMPEP) report. The report documented the results of the follow up review, conducted by telephone, by an NRC team on July 12, 2000. Overall the report appears to be accurate. The Department does have two requests for consideration by the review team and the Management Review Board.

First - the Department would request that in Section 2.1., at the end of the first paragraph on page 4, a statement be added that in all three cases where the inspection letter was not issued within the 30-day time period after the inspection, contact was made with the licensee by telephone and/or e-mail within the 30 day period.

In the case involving the Escalated Enforcement Action, and the case where the inspector was waiting on information from the licensee, correspondence with the licensee was ongoing during the 30-day period. In the case where a licensing action delayed work on the inspection report, the licensee was contacted within the 30 day period and informed that their report was being delayed.

A second issue that the Department would like to comment on concerns the inspection of reciprocity licensees. Since the July 12, 2000 follow up review, the Department has conducted two Priority 1, two Priority 3 and two Priority 4 reciprocity inspections. Since July 12, one additional Priority 1 and one additional Priority 4 reciprocity have been granted. This puts the Department program within one inspection of being completely caught up with its reciprocity inspection goal.

There is presently only one Priority 4 reciprocity licensee in the state which has not been inspected. The Department has been and will remain committed to meeting its inspection goals. As soon as

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additional reciprocity inspection opportunities become available, Department staff will conduct inspections which meet or exceed the reciprocity inspection goal. The Department would therefore respectfully request that the Management Review Board close the third recommendation relating to reciprocity inspections. The Department feels the corrective action on this issue is substantially complete at this point and that the program has demonstrated its commitment to making improvements where necessary.

If you have any questions, you may contact myself or Ken Wangler, the Radiation Control Program Manager, at 701-328-5188.

Sincerely,



Murray G. Sagsveen
State Health Officer

MGS/KWW:as

xc: James L Lynch, U.S. NRC Region III
James Myers, USNRC Office of State and Tribal Programs