

September 26, 2001

Mr. Mike Koranda, Director
Field Operations Division
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-0100

Dear Mr. Koranda:

On September 18, 2001, the Management Review Board (MRB) met to consider the proposed final Integrated Materials Performance Evaluation Program (IMPEP) report on the New Mexico Agreement State Program. The MRB found the New Mexico program adequate to protect public health and safety and compatible with the Nuclear Regulatory Commission's program.

Section 5.0, page 12, of the enclosed final report presents the IMPEP team's single recommendation for the State of New Mexico. We received your August 17, 2001 letter which described your staff's actions taken in response to the recommendation in the draft report. We request no additional information.

Based on the results of the current IMPEP review, the next full review will be in approximately four years.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review and your support of the Radiation Control Program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

/RA/

Carl J. Paperiello
Deputy Executive Director
for Materials, Research
and State Programs

Enclosure:
As stated

cc: William Floyd, Manager
Radiation Protection Program

Cecilia Williams, Chief
Community Services Bureau

Pearce O'Kelley, SC
OAS Liaison to the MRB

Mike Koranda

September 26, 2001

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STP-AG-19

INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF THE NEW MEXICO AGREEMENT STATE PROGRAM

June 18 - 22, 2001

FINAL REPORT

U.S. Nuclear Regulatory Commission

1.0 INTRODUCTION

This report presents the results of the review of the New Mexico radiation control program. The review was conducted during the period of June 18 - 22, 2001, by a review team comprised of technical staff members from the Nuclear Regulatory Commission (NRC) and the State of Florida. Team members are identified in Appendix A. The 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 25, 1999, NRC [Management Directive \(MD\) 5.6](#), "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the review, which covered the period July 19, 1997 to June 22, 2001 were discussed with New Mexico management on June 22, 2001.

A draft of this report was issued to New Mexico for factual comment on July 20, 2001. The State responded in a letter dated August 17, 2001. The Management Review Board (MRB) met on September 18, 2001 to consider the proposed final report. The MRB found the New Mexico radiation control program was adequate to protect public health and safety and compatible with NRC's program.

The New Mexico Agreement State Program is administered by the Community Services Bureau (the Bureau) in the Field Operations Division (the Division) of the New Mexico Environment Department (the Department). The day-to-day operations are carried out by the Radiation Protection Program (the Program) which reports to the Bureau Chief. The Program is supervised by a Program Manager. Organization charts for the Department and the Bureau are in Appendix B.

At the time of the review, the New Mexico Agreement State Program regulated 216 specific licenses authorizing Agreement materials. The review focused on the materials program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New Mexico.

During the review conducted July 14 - 18, 1997, the Program was located in the Bureau of Hazardous & Radioactive Material in the Division of Water and Waste Management. On July 1, 2000, the Program was transferred with all staff and resources to the Community Services Bureau in the Field Operations Division. Shortly after this review, the Program was reorganized as the Radiation Control Bureau in the Field Operations Division, and moved to larger office space.

In preparation for the review, a questionnaire addressing the common and non-common performance indicators was sent to the Program on March 22, 2001. The Program provided a response to the questionnaire on May 24, 2001. During the review, discussions with the Program staff resulted in the responses being further developed. A copy of the final questionnaire is included as Appendix F of the Proposed Final Report and can be found on the NRC's Agencywide Documents Access and Management Systems (ADAMS) using Accession Number ML012010225.

The review team's general approach for conduct of this review consisted of: (1) examination of the Program's response to the questionnaire; (2) review of applicable New Mexico statutes and regulations; (3) analysis of quantitative information from the Program licensing and inspection data

base; (4) technical review of selected licensing and inspection actions; (5) field accompaniments of two Program inspectors; and (6) interviews with staff and management to answer questions or clarify issues. The team evaluated the information that it gathered against the IMPEP performance criteria for each common and non-common performance indicator and made a preliminary assessment of the Program's performance.

Section 2 below discusses the Program's actions in response to recommendations made following the previous review. Results of the current review for the IMPEP common performance indicators are presented in Section 3. Section 4 discusses results of the applicable non-common performance indicators, and Section 5 summarizes the review team's findings. Recommendations made by the review team are comments that relate directly to program performance by the Department. A response is requested from the Department to all recommendations in the final report.

2.0 STATUS OF ITEMS IDENTIFIED IN PREVIOUS REVIEWS

During the previous IMPEP review, which concluded on July 18, 1997, 29 recommendations were made and transmitted to Mr. Mark E. Weidler, Secretary of Environment, on December 30, 1997. A follow-up review, conducted July 6 - 10, 1998 and transmitted to Dr. Ed Kelley, Director, Division of Water and Management on October 7, 1998, closed all but one of the recommendations. The team's review of the current status of this remaining recommendation is as follows:

- (1) The review team recommends that the State expedite promulgation of the compatibility-related regulations now overdue and those which are due within the next 12 months.

1999 Status: The State's response to the recommendation was reviewed during the periodic meeting on December 7, 1999. The staff found that, as of the date of the meeting, the State's regulations were up to date. Further, the Program was on track to complete future rule revisions before their due dates. The staff recommended that the item be closed.

Current Status: The Program has adopted the regulations needed for adequacy and compatibility through alternate legally binding requirements. This is further discussed in Section 4.1. This recommendation is closed.

3.0 COMMON PERFORMANCE INDICATORS

IMPEP identifies five common performance indicators to be used in reviewing both NRC Regional and Agreement State programs. These indicators are: (1) Status of Materials Inspection Program; (2) Technical Quality of Inspections; (3) Technical Staffing and Training; (4) Technical Quality of Licensing Actions; and (5) Response to Incidents and Allegations.

3.1 Status of Materials Inspection Program

The team focused on four factors in reviewing this indicator: inspection frequency, overdue inspections, initial inspections of new licenses, and timely dispatch of inspection findings to licensees. The evaluation is based on the Program's questionnaire responses relative to this

indicator, data gathered independently from the Program's licensing and inspection data tracking system, the examination of complete licensing and inspection casework, and interviews with managers and staff.

The review of the Program's inspection priority policy verified that the New Mexico inspection frequencies for various types or groups of licenses are as frequent as, or more frequent than, similar license types or groups listed in NRC Inspection Manual Chapter (IMC) 2800. The Program requires more frequent inspections in the following license categories: wireline services are inspected at two-year intervals compared to NRC's three years; all broad scope licenses are inspected at two-year intervals compared to NRC's three and five years for type B and C broad academic licenses; medical licenses authorized for therapy are inspected at one-year intervals compared to NRC's three years; and portable gauges are inspected at two-year intervals compared to NRC's five years.

In the questionnaire, the Program indicated that no inspections were overdue by more than 25 percent of the NRC interval. This was verified during the inspection casework reviews, the review of the monthly "tickler" file, and review of the Program's Registration and Licensing database. The team notes that out of 17 inspection files examined, only one routine inspection was overdue when conducted. A memorandum in the file stated that the Program's Registration and Licensing database was missing the inspection due date for this license, and that the error was corrected. Initial inspections were conducted within 6 months of the date each new license was issued.

During the inspection casework review, the team also evaluated the timeliness of the dispatch of inspection findings to the licensees. Inspection reports reviewed were dispatched within 5 to 10 days after the inspection.

In the questionnaire, the Program reported receiving 177 requests for reciprocity during the review period, of which 152 were from core licensees. The Program conducted 81, or about 53 percent, of the core reciprocity licensees, which meets the IMC 1220 goals. The number of reciprocity inspections performed is commendable.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Status of the Materials Inspection Program, be found satisfactory.

3.2 Technical Quality of Inspections

The team evaluated the inspection reports, enforcement documentation, and inspection field notes and interviewed inspectors for radioactive materials inspections conducted during the review period on 17 licensees. The casework included all of the Program's materials inspectors, and covered inspections of various types as follows: industrial radiography, medical broad scope, academic broad scope, high dose rate afterloader (HDR), irradiator, wireline services, veterinary medicine, laboratory research and development, nuclear pharmacy, and medical. Appendix C lists the inspection casework files reviewed for completeness and adequacy with case-specific comments.

Based on the casework file reviews, the team found that routine inspections cover all aspects of the licensee's radiation protection program. The team found that inspection reports are generally

thorough, complete, consistent, of high quality, and with one exception as noted below, contain sufficient documentation to ensure that the licensee's performance with respect to health and safety was acceptable. The documentation supports the violations, the recommendations made to the licensee, and unresolved safety issues. Team inspections were performed when appropriate, and for training purposes.

Exit interviews were generally held with licensee personnel although the participation of upper management was not documented. For example, medical institute inspection reports documented that the inspectors routinely exited with the Radiation Safety Officer and the head of the department, but did not document whether inspectors exited with hospital upper management. The team discussed the issue with the Program Manager and the staff, who indicated that they attempt to exit with licensee upper management, but are not always successful. The staff understands the importance of exiting with licensee's upper management and is committed to conducting and documenting these exit meetings.

The inspection procedures utilized by the Program are consistent with the inspection guidance outlined in NRC's IMC 2800. Inspection reports are in a format that covers all inspection areas for each inspection type. Inspectors consistently document their observation of licensed activities and the results of confirmatory measurements. The Program Manager and senior inspectors conduct frequent accompaniments of junior inspectors. The Program Manager also accompanies senior inspectors.

A review team member accompanied two junior inspectors on inspections during the week of June 11, 2001. The Program's other inspectors were accompanied during the 1997 review. The accompaniment included inspections of an industrial radiography licensee and a medical institution. The facilities are identified in Appendix C.

During the accompaniments, each inspector demonstrated appropriate inspection techniques and conducted performance-based inspections. The inspectors were well prepared for the inspection and thorough in their audits of the licensees' radiation safety programs. Each inspector conducted effective interviews with appropriate licensee personnel, observed licensed operations, conducted confirmatory measurements, and utilized good health physics practices. Their inspections were adequate to assess radiological health and safety at the licensed facilities.

The Program has an adequate number and types of survey meters to support the current inspection program as well as for responding to incidents and emergency conditions. G-M meters, scintillation detectors, ion chambers, micro-R meters, and neutron meters were observed. Contamination wipes are sent to an outside laboratory for analysis.

The Program contracts for instrument calibration from approved calibration companies. However, the calibration of many of the instruments lapsed for periods of time when the contracts expired. For example, during 2000, only one ion chamber was calibrated (other instruments, such as G-M meters, were calibrated). The Program Manager explained that the contract for ion chamber calibration expired due to a management oversight and a new contract could not be funded for 2000. A contract was funded for 2001. The Program Manager confirmed that inspectors always had a calibrated instrument available for routine inspection activities and no performance issues were identified. The team discussed instrument calibration with the Program Manager, Bureau

Chief, and Division Director, who expressed the expectation that implementation of the planned fee rules would provide funding to assure instrument calibration contracts.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Inspections, be found satisfactory.

3.3 Technical Staffing and Training

Issues central to the evaluation of this indicator include the Program's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate these issues, the review team examined the Program's questionnaire responses relative to this indicator, interviewed Program management and staff, and considered any possible workload backlogs.

All technical staff positions require a bachelor's degree in one of the sciences. Positions are classified as either Environmental Specialists, requiring four years experience, or as Environmental Scientists, requiring two years experience.

The Program staff consists of one manager, five environmental specialists and one secretary. The staff is responsible for both the radioactive materials and the x-ray regulatory programs. Approximately 67 percent of each environmental specialist's time is allocated to the radioactive materials area. One staff member is assigned primarily to licensing and the inspection work load is split among the others. The Program has two new, relatively inexperienced staff members.

Four staff members left during the review period, and three of the positions were filled. The Program has authority to fill the remaining vacancy. At the time of the review, a notice of the open position was posted on an internet list server, and several inquiries were received. The Program Manager expected the position to be formally posted and filled in the near future.

The Program hired two staff members in February 1998. With financial help from NRC, the Program sent them to NRC training courses. One of the individuals subsequently left the Program. In October 1999 that position was filled, and special funds were obtained from the legislature for training. The Program remained fully staffed until May 30, 2001, when a senior inspector retired. At the time of the review, the Program's training funds were expended, and it was considering alternative training opportunities, particularly supplemental training in medical brachytherapy (including HDR) procedures from the State University. The Program Manager stated that, due to funding, there was limited opportunity for Program staff to attend NRC training courses. The Program does provide on-the-job training to staff, primarily on internal procedures.

Most of the minor deficiencies observed by the review team in the other indicators can be associated with Program stress due in part to staff and training limitations. No performance issues were identified during the review period as a result of these deficiencies due to the expertise and commitment of the Program's management and staff. The review team noted that the Program with support from the Bureau and the Division, is requesting additional staff as part of its continuing improvement from the 1997 IMPEP review, and anticipates additional funds for training when the fee rules are implemented. The review team believes this support will further enhance the performance of the program.

The Program has a documented training and qualification program, "Radioactive Materials Licensing and Inspection Qualification Procedure, Version 2, June 3, 1999." This procedure is comparable to NRC's IMC 1246, "Formal Qualification Programs in the Nuclear Material Safety and Safeguards Program Area." The Program's procedure provides for special circumstances where an individual may be granted interim qualification status until core training is completed. One of the examples given for special circumstances is budget reduction.

The Program receives advice and direction from two advisory panels, the Radiation Technical Advisory Council (the Council) and the Environmental Improvement Board (the Board). The Council members are required to have scientific or medical backgrounds, and they can be radioactive materials licensees. The Board is the rule promulgating authority for radiation and all other Department programs. Conflict of interest on the part of the Council or Board members is not addressed by the New Mexico Radiation Control Act. The team discussed conflict of interest with the Program Manager. Based on that discussion, the Department's legal advisor is reviewing the general statutes concerning conflict of interest to determine if they are applicable to the Council and Board members.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

3.4 Technical Quality of Licensing Actions

The review team examined completed licensing casework and interviewed the staff for 27 specific licenses. Licensing actions were evaluated for completeness, consistency, proper isotopes and quantities used, qualifications of authorized users, adequate facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions. Licenses were evaluated for overall technical quality including accuracy, appropriateness of the license, its conditions, and tie-down conditions. Casework was evaluated for timeliness; adherence to good health physics practices; reference to appropriate regulations; documentation of safety evaluation reports, product certifications or other supporting documents; consideration of enforcement history on renewals; pre-licensing visits, peer or supervisory review as indicated; and proper signature authority. The files were checked for retention of necessary documents and supporting data.

The licensing casework was selected to provide a representative sample of licensing actions that were completed during the review period. The sampling included the following types: well logging, industrial radiography, medical institution, medical private practice and broadscope, nuclear pharmacy, academic, irradiator, research and development, analytical, stationary and portable gauge. Licensing actions included three new licenses, 12 amendments to existing licenses, eleven renewals in their entirety amendments and one termination which included decommissioning. A list of the licenses evaluated with case-specific comments can be found in Appendix D.

The Program revised licensing procedures to incorporate NRC licensing procedures of 1997, and license reviewer's procedures. Some application forms were revised, and all licensing forms were revised. Revised documents were entered into the database for accessibility by technical staff. Revision of Standard License Conditions is ongoing. Licensing templates were set up for more efficient writing of new and amended licenses. Regulatory Guides were created for

moisture/density gauges, broad-scope licensing, and decommissioning. The human use licensing guidance was revised using the NUREG 1556, Volume 9: "Program-Specific Guidance About Medical Use Licenses (Draft Report for Comment)" as the reference. New checklists were developed using NUREG 1556 as guidance.

Overall, the review team found that the licensing actions were thorough, complete, consistent, and of acceptable quality with health and safety issues properly addressed. License tie-down conditions were almost always stated clearly, backed by information contained in the file, and inspectable. The licensee's compliance history was taken into account when reviewing renewal applications and amendments. Reviewers appropriately used the State's licensing guides, license templates, standard conditions and checklists. No potentially significant health and safety issues were identified.

The team observed written correspondence between the reviewer and the licensee to resolve action request deficiencies. However, in many instances, the deficiencies were resolved by telephone discussions. While the telephone discussions were dated and noted in the record as administrative changes, the content of the discussions was not always documented. The team did not observe any performance issue, and noted that all license reviews were conducted by a single staff member, and all licenses were signed by the Program Manager. The review team discussed their concern about incomplete documentation with the Program staff. The staff was aware of the potential for problems, and had an action plan of Program improvements to address the issue.

The team evaluated financial assurance and decommissioning activities through the review of a terminated license where financial assurance was required for decommissioning. The actions were well documented from the initiating action to final surveys, materials disposition and termination of the license.

The Program renews licenses every five years. All license actions were responded to in a timely manner. The review team noted that most license actions were issued within days of the requested action, and that no license action exceeded 60 days.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

3.5 Response to Incidents and Allegations

In evaluating the effectiveness of the Program's actions in responding to incidents, the review team examined the Program's response to the questionnaire relative to this indicator, evaluated selected incidents reported by New Mexico to the Nuclear Materials Events Database (NMED) against those contained in the Program's files, and evaluated the casework and supporting documentation for six materials incidents. A list of the incident casework examined with case-specific comments is included in Appendix E. The team also reviewed the Program's response to the one allegation involving radioactive materials during the review period. No allegations were referred by the NRC to the Program since 1997.

The review team discussed incident and allegation procedures, file documentation, the Program's event and allegation tracking system, the NMED, and notification of incidents to the NRC Operations Center with the Program Manager and selected staff.

The team found that responsibility for initial response and follow-up actions to materials events and allegations rested solely with the Program. The staff members evaluate events and allegations, then determine the appropriate response through discussion with the Program Manager. Program staff evaluates all events with potential for affecting public safety.

The Program had 23 materials incidents during the review period, 10 of which were reportable under NRC criteria. Six incidents were selected for review. The incidents included lost gauges, overexposure, and misadministrations. The review team found that the Program's response to incidents was complete and comprehensive. Initial responses were prompt and well-coordinated and the level of effort was commensurate with the health and safety significance. The Program dispatched inspectors for on-site investigations when appropriate. Actions were coordinated with other agencies, as appropriate.

The Program followed written procedures for responding to events. The procedures addressed the actions to be taken upon the notification of an event, the event tracking system, event evaluation and investigation, documentation, notification to the NRC Operations Center, and the reporting of events to the NMED. The team noted minor deficiencies in the casework, as noted in the casework in Appendix E.

The team noted that the Program has copies of the Handbook to the Office of State and Tribal Programs (STP) Procedure SA-300, "Reporting Material Events." The Program sent copies of all event reports to the NMED contractor. The team noted, however, that the staff member responsible for entry of incidents into NMED retired in May 2001. The Program Manager identified a staff member to take over this responsibility who subsequently completed training in August 2001.

During the review period the Program received one allegation, which was fully investigated. The casework indicated that the Program took prompt and appropriate action in response to the concerns raised. The allegation was appropriately closed by letter to the alleger. There were no performance issues identified from the review of the allegation file and documentation. Procedurally, allegations are treated and documented in the same manner as events. The Program can protect an alleger's identity.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Response to Incidents and Allegations, be found satisfactory.

4.0 NON-COMMON PERFORMANCE INDICATORS

IMPEP identifies four non-common performance indicators to be used in reviewing Agreement State programs: (1) Legislation and Program Elements Required for Compatibility; (2) Sealed Source and Device Evaluation Program; (3) Low-Level Radioactive Waste Disposal Program; and (4) Uranium Recovery Program. New Mexico's Agreement does not cover the sealed source and

device evaluation program or uranium recovery operations, so only two non-common performance indicators were applicable to this review.

4.1 Legislation and Program Elements Required for Compatibility

4.1.1 Legislation

The laws of the State of New Mexico are posted on the Lexlaw Internet web site. The team had the opportunity to review the statutes applicable to radiation control, along with the Program's responses to the questionnaire.

The team determined that the New Mexico Radiation Protection Act authorizes the Board and the Department, through the Governor, to enter into the agreement with the NRC. The law designates the Board as the radiation control agency for the State of New Mexico, with the Department carrying out the day-to-day responsibilities. This law was previously reviewed and found consistent with the IMPEP criteria, so the team did not evaluate it further.

Senate Bill 163, as amended, passed in 2000, establishing a radiation protection fund for the deposit of fees collected. The previous law required fee money collected to be deposited into the State General Fund. Use of the new dedicated fund is exclusive to the Program. Unused monies carry over for use in succeeding fiscal years. Money in the fund may be used for any authorized activity of the Program.

4.1.2 Program Elements Required for Compatibility

The New Mexico Rules for Radiation Protection apply to all ionizing radiation, whether emitted from radionuclides or devices. New Mexico requires a license for possession, and use, of all radioactive material including naturally occurring materials, such as radium, and accelerator-produced radionuclides.

The review team interviewed Program staff and examined the procedures used to adopt rules. Members of the public and other interested parties are offered an opportunity to comment on proposed rules. The team found that the process was unchanged during the review period, however, a new required format for draft rules was implemented. Reformatting previously drafted rules impacted the resources of the Program.

The draft rules are first reviewed by the Council. With consent of the Council, the Program proposes adoption of the draft rules. The Council must approve all rule changes before the process for rule promulgation can proceed.

Public notice of proposed new or revised rules is given at least 60 days prior to a public hearing before the Board. When the Board approves the proposed rules, they are filed with the Secretary of State and become effective in 30 days. The Program sends the proposed rules to NRC when they are publicly noticed. Final rules are sent to NRC after they are filed with the Secretary of State. The Program maintains documentation of transmitting the draft and final rules to NRC.

The team evaluated New Mexico's responses to the questionnaire, reviewed the status of regulations required to be adopted by the State under the Commission's adequacy and

compatibility policy, and verified regulation status with data obtained from the Office of State and Tribal Programs' Regulation Assessment Tracking System. The team found five rules that should have been, but were not adopted within three years after the equivalent NRC rule became effective. The team notes that the Program chose to delay adoption of those regulations in part to apply resources to the development of a fee regulation instead. Discussions with program staff during this review indicated a good awareness of recently adopted rules. The overdue rules were drafted prior to the review. They are scheduled to be sent to the Council along with the proposed fee rule, and expected to be effective in spring of 2002. Current NRC policy requires that Agreement States adopt certain equivalent rules or legally binding requirements no later than three years after they are effective.

The overdue rules are:

- "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act," 10 CFR Part 20 amendment (61 FR 65119) that became effective January 9, 1997.

The review team noted that this rule when promulgated will apply to all New Mexico licensees. However the Program determined that there are no licensees that need to report emissions exceeding 10 mrem per year under the requirements established by this rule.

- "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State," 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.
- "Licenses for Industrial Radiography and Radiation Safety - Requirements for Industrial Radiography Operations," 10 CFR Parts 30, 34, 71, and 150 amendments (62 FR 28948) that became effective June 27, 1997.

The Program is using license conditions as legally binding alternatives to rulemaking. The Program did not submit a copy of the conditions for NRC review following STP Procedure SA-201 when it began using the conditions. Copies of the conditions were included with the comments provided by the Department on the draft of this report and are under review.

- "Deliberate Misconduct by Unlicensed Persons," 10 CFR Parts 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) that became effective February 12, 1998.

This rule was reviewed by the Department's legal staff which determined that the Program has authority to act under statutory provisions.

- "Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea," 10 CFR Part 30 amendment (62 FR 63634) that became effective January 2, 1998.

The Program determined that a license is not required for the indicated use of this material. The Program further stated that only one inquiry about using the material has been received, and no known facility or individual in New Mexico is using it.

The review team recommends that the State adopt the regulations, or other legal binding requirements, which are overdue for adoption.

The following rules are not yet due. The Program is in the process of adopting them, and expects them to be effective in Spring of 2002.

- "License for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations; Clarifying Amendments and Corrections," 10 CFR Part 34 amendment (63 FR 37059) that became effective July 9, 1998.
- "Minor Corrections, Clarifying Changes, and a Minor Policy Change," 10 CFR Parts 20, 32, 35, 36, and 39 amendments (63 FR 393477 and 63 FR 45393) that became effective October 26, 1998.
- "Transfer for Disposal and Manifest; Minor Technical Conforming Amendments," 10 CFR Part 20 amendment (63 FR 50127) that became effective November 20, 1998.

The following regulations will become due in the future and are included here to assist the State in including them in future rulemakings or by adopting alternate generic legally binding requirements:

- "Respiratory Protection and Controls to Restrict Internal Exposures," 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524) that became effective February 2, 2000.
- "Energy Compensation Sources for Well Logging and Other Regulatory Clarifications," 10 CFR Part 39 amendment (65 FR 20337) that became effective May 17, 2000.
- "New Dosimetry Technology," 10 CFR Parts 34, 36, and 39 amendments (65 FR 63749 and 66 FR 1573) that became effective January 8, 2001.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, be found satisfactory.

4.2 Sealed Source and Device (SS&D) Evaluation Program

During the 1997 IMPEP review, the team noted that the Program rarely performed SS&D evaluations. On January 1, 1998, the Governor formally returned the authority for the SS&D evaluation program, and the Program did not perform any evaluation in 1997. Accordingly, the team did not review this indicator.

4.3 Low-Level Radioactive Waste (LLRW) Disposal Program

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement" to allow a State to seek an amendment for the regulation of LLRW as a separate category. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need of an amendment. Although New Mexico has LLRW disposal authority,

NRC has not required States to have a program for licensing a LLRW disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, they are expected to put in place a regulatory program which will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in New Mexico. Accordingly, the review team did not review this indicator.

5.0 SUMMARY

As noted in Sections 3 and 4 above, the review team found New Mexico's performance to be satisfactory for all six performance indicators reviewed. Accordingly, the review team recommended and the MRB concurred in finding the New Mexico Agreement State program to be adequate to protect public health and safety and compatible with NRC's program. Based on the results of the current IMPEP review, the next full review will be in approximately four years.

Below is the recommendation, as mentioned earlier in the report, for evaluation and implementation, as appropriate, by the Program.

RECOMMENDATION:

1. The team recommends that the State adopt the regulations, or other legally binding requirements, which are overdue for adoption. (Section 4.1.2)

LIST OF APPENDICES AND ATTACHMENTS

Appendix A	IMPEP Review Team Members
Appendix B	New Mexico Organization Charts
Appendix C	Inspection Casework Reviews
Appendix D	License Casework Reviews
Appendix E	Incident Casework Reviews
Attachment	August 17, 2001 Letter from Mike Koranda New Mexico's Response to the Draft IMPEP Report

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Richard Blanton, STP	Team Leader Legislation and Program Elements Required for Compatibility
Linda McLean, Region IV	Status of Materials Inspection Program Technical Quality of Inspections Inspection Accompaniments
Teresa Darden, Region I	Technical Quality of Licensing Actions
Michael Stephens, Florida	Technical Staffing and Training Response to Incidents & Allegations

APPENDIX B

New Mexico
Environment Department

ORGANIZATION CHARTS

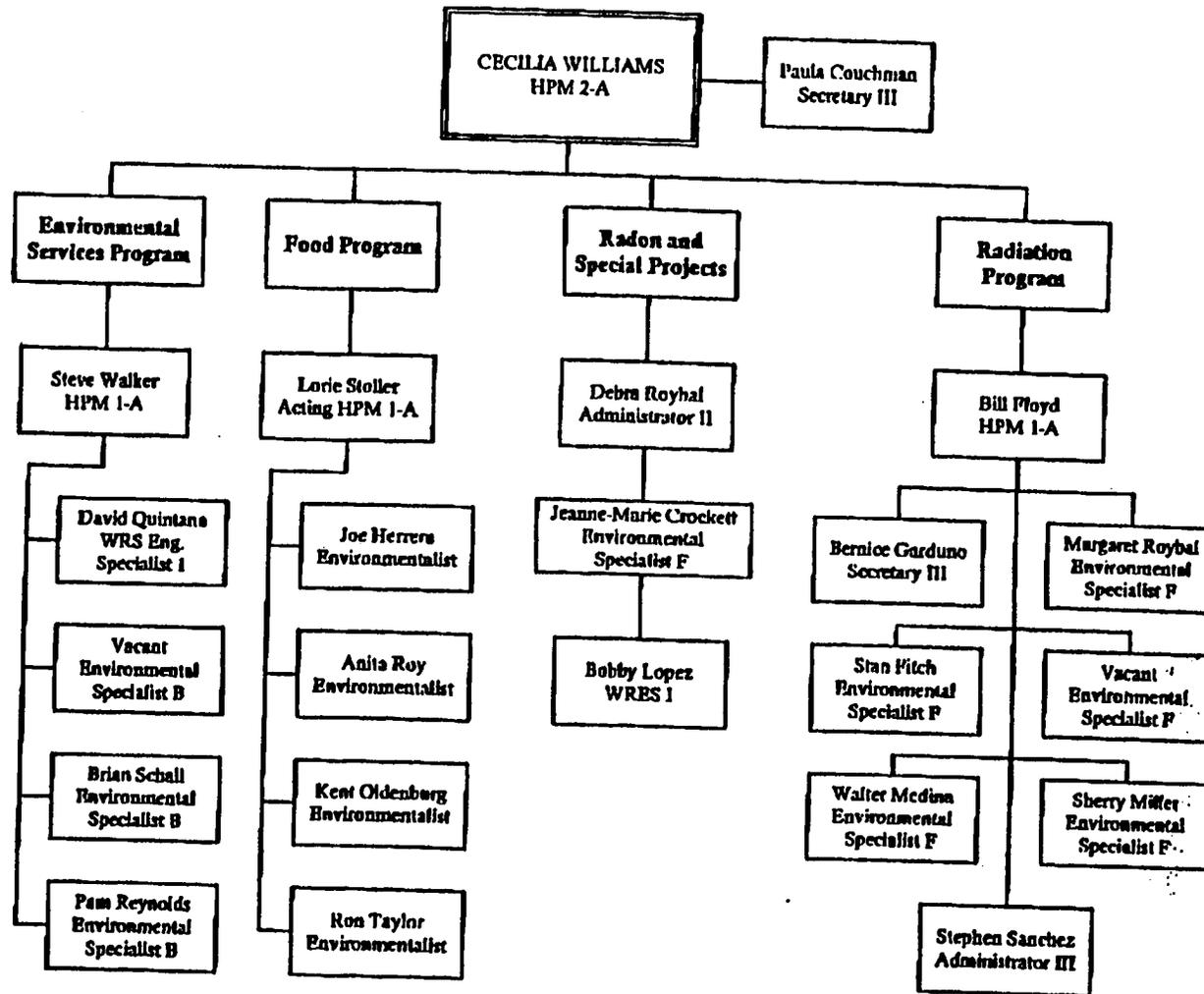
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Field Operations Divisions

<p>DISTRICT I Albuquerque 4131 Montgomery Blvd., NE Albuquerque, NM 87109 Ph. # 841-9450 Fax # 884-9254 Tom Skibitski & Julie Montoya-Romero</p>	<p>DISTRICT II Santa Fe #4 Calle Medico Santa Fe, NM 87505 Ph. # 827-1840 Fax # 827-1839 Benito Garcia & Suzanne Lopez</p>	<p>DISTRICT III Las Cruces 1001 North Solano Dr. Las Cruces, NM 88001 Ph. # 524-6300 Fax # 526-3891 Ken Smith & Lucy Dunn</p>	<p>DISTRICT IV Roswell 1914 West Second St. Roswell, NM 88201 Ph. #624-6046 Fax #624-2023 Darwin Pattengale & Alicia Gonzales</p>	<p>DRINKING WATER BUREAU 525 Camino De Los Marquez, Ste. 4 Santa Fe, NM 87502 Ph. #827-7536 Fax #827-7545 Bill Bartels & Annette Mandel</p>	<p>COMMUNITY SERVICES BUREAU 525 Camino Del Los Marquez, Ste. 4 Santa Fe, NM 87502 Ph. #476-8531 Fax # 476-8541 Cecilia Williams & Paula C.</p>
<p>Farmington 724 West Animas Farmington, NM 87401 Ph. # 327-9851 Fax # 326-3747</p>	<p>Espanola 705 La Joya Street Espanola, NM 87532 Ph. # 753-7256 Fax # 753-1840</p>	<p>Alamogordo 411 Tenth St. Rm. 106 Alamogordo, NM 88310 Ph. # 437-7115 Fax # 434-1813</p>	<p>Carlsbad 406 North Guadalupe Carlsbad, NM 88220 Ph. # 885-9023 Fax # 887-9283</p>		<p>DOE/ White Rock 35 Rover Blvd., Ste. D, Rm. 100 White Rock, NM 87544 Ph. # 672-0443 Fax # 672-0466</p>
<p>Gallup 306 South Fifth Gallup, NM 87301 Ph. # 722-4160 Fax # 863-2664</p>	<p>Las Vegas 505 E. National Ave., Ste. 3 & 4 Las Vegas, NM 87701 Ph. # 425-6764 Fax # 425-6604</p>	<p>Deming Post Office Box 2867 Deming, NM 88031 Ph. # 546-7559 Fax # 546-9326</p>	<p>Clovis 100 Manann Blvd., Unit 3 Clovis, NM 88101 Ph. # 762-3728 Fax # 769-2527</p>		
<p>Grants 1212 1/2 Lobo Canyon Rd. Grants, NM 87020 Ph. # 287-8845 Fax # 287-3415</p>	<p>Los Alamos 475 20th Street Los Alamos, NM 87544 Ph. # 662-1430</p>	<p>Silver City 1302 E. 32nd St. Silver City, NM 88061 Ph. # 388-1934 Fax # 388-3258</p>	<p>Hobbs 726 E. Michigan, Ste. 165 Hobbs, NM 88240 Ph. # 393-4302 Fax # 393-0906</p>		
<p>Los Lunas 601 Main St., Ste. 27 Los Lunas, NM 87031 Ph. # 865-9797 Fax # 865-3405</p>	<p>Raton 1243 South Second St. Raton, NM 87440 Ph. # 445-3621 Fax # 445-3376</p>	<p>Silver City/ SWQB 910 E. 32nd St. Silver City, NM 88061 Ph. # 388-0599 Fax# 388-1086</p>	<p>Ruidoso 1216 Mechem Dr., Ste. 2 Ruidoso, NM 88345 Ph. # 258-3272 Fax # 258-4891</p>		
<p>Rio Rancho 224 Unser Blvd., SE Ste. E Rio Rancho, NM 87124 Ph. # 892-4483 Fax # 892-4816</p>	<p>Taos 1215-B Gusdorf Taos, NM 87571 Ph. # 758-8808 Fax # 758-9851</p>		<p>Tucumcari 113 W. Center Tucumcari, NM 88401 Ph. # 461-1671 Fax # 461-1865</p>		
<p>Socorro 214 Neel Ave., NW Socorro, NM 87801 Ph. # 835-1287 Fax # 835-3119</p>					<p>Toll Free Number: 1-800-219-6157</p>

Update 10-13-00 S.M.S.

New Mexico Environment Department Community Services Bureau Organizational Chart



Updated
June 19, 2001

New Mexico Environment Department

CABINET SECRETARY

 Pete Maggiore
827-2855

Office of General Counsel Paul Ritzma 827-2983	Communications Cathy Tyson 827-2855	Planning & Program Development Diane Naranjo 827-2855	DEPUTY SECRETARY Paul Ritzma 827-2855	Administrative Assistant Jo Huntington 827-2855	Pollution Prevention Vacant 827-0677	Internal Audit Jim Perry 827-2855	Chief Info. Officer Renee Martinez 827-0319
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Water & Waste Management Division Greg Lewis 827-1758	Environmental Protection Division Jim Najima 827-2932	Administrative Services Division Robert Horowitz 476-3728	Field Operations Division Mike Koranda 827-1080
Hazardous & Radioactive Material Bureau James Bearzi 827-1557	Solid Waste Bureau Butch Tongate 827-2775	Personnel Services Bureau Clifford Hawley 827-2844	District I Tom Skibitski 841-9454
Ground Water Quality Bureau Marcy Leavitt 827-2919	Occupational Health Safety Bureau Sam Rogers 827-4230	Information Technology Services Bureau Glen Smutz 827-0286	District II Courte Vorhees 476-8531
Surface Water Bureau Jim Davis 827-0187	Air Quality Bureau Sandra Ely 827-1494	Financial Services Bureau Charles Martinez 476-3725	District III Ken M. Smith 524-6300
DOE Oversight Bureau John Parker 827-1536	Underground Storage Tank Bureau Jerry Schoepner 827-0188	Construction Programs Bureau Haywood Martin 827-2797	District IV Darwin Pattengale 624-6046
		Purchasing Bureau Margaret Trujillo 827-2774	Drinking Water Bureau Bill Bartels 827-7536
		Budgets & Grants Management Bureau Dolores Baca 476-3701	Community Services Bureau Cecilia Williams 827-7541

ATTACHMENT

August 17, 2001 Letter from Mike Koranda
New Mexico's Response to Draft IMPEP Report

ML012330368



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Radiation Control Bureau
1190 St. Francis Drive P.O. Box 26110
Santa Fe, New Mexico 87502-6110
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PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

August 17, 2001

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

**RE: On-Site IMPEP Review-New Mexico, June 18-22, 2001,
State Program Response to Draft Report.**

Dear Mr. Lohaus:

This letter contains the response of the Radiation Control Bureau (RCB) of the New Mexico Environment Department (Department) to the IMPEP team's preliminary findings of program adequacy and compatibility for consideration by the Management Review Board. The RCB appreciates NRC'S comments and recommendations pertaining to improvements in the New Mexico materials program. The implementation of the NRC's recommendations made pursuant to the IMPEP Review in July 1997 have resulted in improvement to this program.

Following are the Department's responses keyed to the review team's findings and recommendations.

1. The team recommends that the program submit copies of the three rules adopted in 1997 but not submitted for review by NRC, and copies of license conditions used as legally binding alternatives to rulemaking, for evaluation by NRC following STP procedure SA-201.

1. Response: The RCB has not yet adopted the complete rules pertaining to "Performance Requirements for Radiography Equipment," 10 CFR Part 34 amendment (60 FR 28323) that became effective June 30, 1995; the rule pertaining to "Resolution of the Radioactive Materials; Clean Air Act," 10 CFR Part 20 amendment (61 FR 65119) that became effective January 9, 1997; or the rule pertaining to "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State," 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.

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On August 1, 2001, the RCB provided the NRC with the Department's proposed rules pertaining to "Performance Requirements for Radiography Equipment." These proposed rules have been placed on the agenda for consideration by the New Mexico Radiation Technical Council (RTAC), at their September 14, 2001, meeting. These proposed rules will hopefully be approved by the RTAC, go before the Environmental Improvement Board (EIB) for public hearing, and become effective before the end of the calendar year. The RCB adopted the equivalent of NRC's 34.20 (a) in May 1995. In the absence of rule adoption for the NRC's 34.20 (a) 2 and 34.20 (e), the RCB has used the following license conditions to address these requirements:

- A. Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing of similar individual radiography components. Upon review, the Department may find this an acceptable alternative to actual testing of the component pursuant to the referenced standard.
- B. Equipment used in industrial radiographic operations need not comply with Section 8.9.2 (c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

The rule pertaining to the "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act" will be adopted no later than Spring 2002. The RCB currently regulates no licensee which would fall under this rule.

The RCB will likewise adopt the rule pertaining to "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State" no later than Spring 2002.

- 2. An overdue rule is "Deliberate Misconduct by Unlicensed Persons," 10 CFR Parts 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) that became effective February 12, 1998.

2. Response: The overdue rule "Deliberate Misconduct by Unlicensed Persons," 10 CFR Part 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) has been determined by the Department's Office of General Counsel to be covered by existing statutory provisions. The Department has

Mr. Lohaus, Director
August 17, 2001
Page 3

the authority to bring criminal penalties or civil actions against any person violating Department regulations (see attached statute, Environmental Improvement Act).

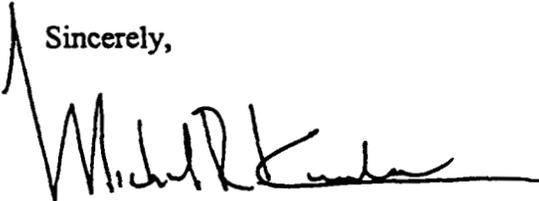
3. An overdue rule is "Exempt Distribution of Radioactive Drug Containing One Microcurie of Carbon-14 Urea," 10 CFR Part 30 amendment (62 FR 63634) that became effective January 2, 1998.

3. Response: Although one medical licensee made an initial inquiry about using one microcurie of carbon-14 urea in testing for the active presence of Helicobacter pylori, the Department is unaware of any individual or facility that has ever utilized this method of detection. This one inquiry was addressed by explaining to the individual that no license is required for in vivo diagnostic use of this radioisotope.

The Department and the RCB wish to assure NRC that work has begun on bringing state radiation protection regulations into full compatibility with NRC requirements, and that full compatibility should be attained by Spring 2002.

Please contact the RCB should you require further assistance or information.

Sincerely,



Mike Koranda, Director
Field Operations Division
New Mexico Environment Department

Enc.

- c.c. Richard Blanton, Office of State and Tribal Programs, U.S. NRC
Linda McLean, State Agreements Program, U.S. NRC, Region IV
Peter Maggiore, Cabinet Secretary, New Mexico Environment Department

any person who is or may be affected by a regulation adopted by the environmental improvement board a right of appeal to the court of appeals, and a company is such a person where it maintains liquid waste systems, each with capacities within the limits of the liquid waste disposal regulations adopted pursuant to 74-1-8A(3) NMSA 1978. *Climax Iron Co. v. New Mexico Env'tl. Imp. Bd.*, 106 N.M. 11, 738 P.2d 132 (Ct. App. 1987).

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L.J. 2, 105 (1973).

For comment, "Delegation of Legislative Authority on the State Level; Environmental Protection in New Mexico: *Public Service Co. of New Mexico et al. v. New Mexico Environmental Improvement Board*," see 17 *Nat. Resources J.* 521 (1977).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 4.

39A C.J.S. Health and Environment §§ 138, 142, 145.

74-1-10. Penalty.

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (2) or (3) of Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period and assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars (\$1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars (\$100) for each violation. A penalty imposed for violation of drinking water regulations 20 NMAC 7.1 or permit conditions shall not exceed one thousand dollars (\$1,000) per violation per day. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If a violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars (\$1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to be credited to the general fund.

H. Penalties collected pursuant to violations of drinking water regulations 20 NMAC 7.1 or permit conditions pursuant to Paragraph (2) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to the credit of the water conservation fund.