

DATED: OCT 22, 1992

The Honorable Terry Branstad
Governor of Iowa
State Capitol
Des Moines, Iowa 50319

Dear Governor Branstad:

This letter refers to the discussion Mr. A. Bert Davis, Region III Administrator, Ms. B. J. Holt, Chief, Nuclear Materials Safety Section 1, Mr. James Lynch, State Agreements Officer and Mr. Carlton Kammerer, Director, Office of State Programs, held with Mr. Christopher G. Atchison, Director, Iowa Department of Public Health, Mr. Jack Kelly, Director, Division of Health Protection, Mr. Donald Flater, Chief, Bureau of Environmental Health and Mr. David Fries, Director, Division of Administration and Planning, on September 4, 1992. As a result of our follow-up review of the State's radiation control program, our view is that the Iowa program has serious management and programmatic deficiencies which, unless addressed expeditiously, could put your 274b Agreement in jeopardy. The NRC will provide the State with short-term assistance as described in more detail in this letter, to assist in your prompt correction of the program deficiencies.

In 1985, you and the NRC Chairman signed an Agreement pursuant to Section 274b of the Atomic Energy Act, whereby the State of Iowa assumed the regulatory authority for byproduct material (as defined in Section 11e.(1) of the Atomic Energy Act), source and special nuclear material in quantities not sufficient to form a critical mass. The Agreement provided that the State will use its best efforts to maintain continuing compatibility with the NRC's program. The past two reviews, in July 1990 and October 1991, resulted in the withholding of a finding of adequacy and compatibility due to significant programmatic deficiencies. The current review found the radioactive materials program continuing to decline to the point where immediate measures need to be taken to reestablish the State's ability to conduct basic materials inspection and licensing functions. We believe that immediate, decisive actions must be taken by the State of Iowa to restore the radioactive materials program to a level of adequacy that will provide protection of public health and safety.

In order for the State to continue with the 274b program, strong management involvement and control must be instituted and the staffing shortage, which has plagued the program for years, must be alleviated. These elements, quality management and qualified staffing, are essential to bring the program back to an adequate and compatible standing and to provide a long-term solution to program deficiencies. We would appreciate receiving from you, within thirty days of this letter, an action plan for responding to the recommendations in the enclosure.

Your staff stated during the September 4, 1992 meeting that Iowa was making an effort to increase management involvement and control over the materials program by a restructuring which would allow managers increased interaction time with the radioactive materials program. The NRC believes that active and consistent management of the materials program is essential to improve and to add stability to Iowa's program. Management must be involved on a daily basis in program oversight, personnel development and quality control. Mr. David Roederer of your staff informed me that two technical staff positions were released for recruitment and hiring for the radioactive materials program. Mr. Flater has also informed us that negotiations are underway with a consultant to provide inspection training, to write procedures and to develop inspection and licensing tracking systems. The NRC will provide short-term assistance to the State of Iowa to achieve our common goal of public health and safety by providing licensing and inspection training and technical assistance. Region III license reviewers and inspectors will provide training and assistance to your staff in the Des Moines office, the Region III office and at your licensee facilities. Mr. Lynch, the Regional State Agreements Officer, will work out the details of this effort with Mr. Atchison in the near future.

Enclosure 1 contains an explanation of our policies and practices for reviewing Agreement State programs. Enclosure 2 is a summary of our assessments and comments which were discussed with your staff at the conclusion of the review. As stated earlier, we request specific responses from the State on the current review comments and recommendations in Enclosure 2 and in this letter within thirty days of this letter date. As discussed in this summary, we are concerned that several commitments made in response to our October 1991 review were not factual. Specifically, the January 6, 1992 letter to Mr. Kammerer which was signed by Mr. Flater and Mr. Hokel stated: (1) that certain information notices had been sent to licensees when they had not; (2) that licensing audit checklists would be used in casework audits henceforth and they were not; and (3) that licensing notebooks had been developed when they had not. This information was partially addressed in Mr. Flater's letter of September 16, 1992. These misrepresentations question the credibility and the effectiveness of management oversight of the program. Iowa's upper management should address this concern in the response to this letter.

When received, we will provide Mr. Atchison with our thoughts on the action plan, and in any event, we will review the progress of the Iowa program in three months to determine if necessary progress has been made to justify continuation of the 274b Agreement.

In accordance with NRC practice, I am also enclosing a copy of this letter for placement in the State's Public Document Room or otherwise to be made available for public review.

The Honorable Terry Branstad

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I appreciate the courtesy and cooperation extended the NRC staff during the review. I am looking forward to your response.

Sincerely,

James M. Taylor
Executive Director for Operations

Enclosures:
As stated

cc w/encls:
Christopher G. Atchison, Director
Iowa Department of Public Health
John R. Kelly, Director
Division of Health Protection
Donald A. Flater, Chief
Bureau of Environmental Health
Carlton Kammerer, Director
Office of State Programs
A. Bert Davis, Regional Administrator
NRC Region III
State Public Document Room
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bcc w/encls:
The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque

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Application of "Guidelines for NRC Review
of Agreement State Radiation Control Programs"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs," were published in the Federal Register on May 28, 1992, as an NRC Policy Statement. The Guidelines provide 30 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into two categories. Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in several Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e., those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas is critical. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act, as amended.

ENCLOSURE 1

SUMMARY OF ASSESSMENTS AND COMMENTS
FOR THE IOWA RADIATION CONTROL PROGRAM
OCTOBER 12, 1991 TO SEPTEMBER 4, 1992

SCOPE OF REVIEW

This follow-up program review was conducted in accordance with the Commission's Policy Statement for reviewing Agreement State Programs published in the Federal Register on May 28, 1992, and the internal procedures established by the Office of State Programs. The State's program was reviewed against the 30 program indicators provided in the guidelines. The review included inspector accompaniments, discussions with program management and staff and technical evaluation of selected license and compliance files.

The follow-up program review meeting with Iowa representatives was held during the period August 31, 1992 through September 4, 1992 in Des Moines. The State was represented by John R. Kelly, Director, Division of Health Protection, Daniel K. McGhee, Environmental Specialist and Thomas H. Wuehr, Environmental Specialist. The NRC was represented by James L. Lynch, Region III State Agreements Officer and B. J. Holt, Chief, Nuclear Materials Safety Section 1.

Mr. Lynch and Ms. Holt interviewed program staff, reviewed incident files and reviewed selected license and compliance files in the Radioactive Materials Program. Mr. Lynch also accompanied Mr. McGhee on a September 2, 1992 inspection of an industrial radiography license and Mr. Wuehr on September 3, 1992 portable and fixed gauge inspections.

CONCLUSION

At this time, due to the continual degradation of the program, the staff is unable to offer a finding that the Iowa program for the regulation of agreement materials is adequate to protect public health and safety and compatible with NRC's program for regulation of similar materials. The management of the program has not provided sufficient support to the radioactive materials program over the past several years which leaves it in a condition which threatens to jeopardize the Agreement.

In order for the State to continue with the 274b program, the State will need to take quick and decisive action to address these problems. The NRC will support the State's efforts to upgrade the radioactive materials program to one that is both adequate and compatible. NRC intends to provide training and assistance to Iowa inspection and licensing staff. NRC will also provide copies of NRC procedures and regulatory guides as may be useful. NRC is requesting that Iowa provide a detailed action plan to Region III within 30 days of the date of this letter so that NRC may provide timely and appropriate assistance. Also, as Mr. Flater and Mr. Lynch agreed, monthly status reports will be provided to Mr. Lynch so that NRC staff may monitor the progress of the program recovery.

STATUS OF PROGRAM RELATED TO PREVIOUS NRC FINDINGS

The results of the previous follow-up review were reported to the State in a letter to Mr. Atchison dated December 27, 1991. Of the ten program indicators addressed during that review, only two were satisfactorily resolved and closed out prior to this meeting. The remaining eight areas remain as open items, and are detailed in the following section of this enclosure.

Several commitments were made in the January 6, 1992 response letter which were not factual. These items are addressed in the transmittal letter and elsewhere in this enclosure.

CURRENT REVIEW COMMENTS AND RECOMMENDATIONS

All 30 program indicators were reviewed and the State fully satisfies 18 of these indicators. Specific comments and recommendations for the remaining 12

indicators (including eight repeated from the previous follow-up review) are as follows:

1. Inspector's Performance and Capability is a Category I Indicator. We consider the following comment to be significant.

Comment

Inspectors should be qualified to evaluate health and safety issues and be able to determine compliance with State regulations. It was determined through accompaniments and interviews with the two inspectors that they had neither the training nor knowledge to perform many of the categories of inspections required in the Iowa program. The types of licenses which they are not yet qualified to inspect include: nuclear medicine, radiation therapy, teletherapy, nuclear pharmacies, broadscope research and development, well logging and large irradiators.

With the resignation of the Radioactive Materials Program Supervisor, a formal system of approval by supervision prior to the performance of inspections in new license categories has not been established.

Recommendation

We recommend that the State take immediate action to train inspection personnel for all types of license programs and/or hire additional inspectors who are qualified to perform those types of inspections.

We recommend that a consultant be contracted to perform inspector training and to assist Iowa staff in the preparation of inspection and related administrative procedures.

We recommend that State personnel accompany NRC and other Agreement State inspectors for purposes of training when opportunities arise.

We recommend that inspectors demonstrate to supervisors, in a formal manner, an appropriate level of understanding with regard to regulations, guidance and policies prior to independently performing various types of inspections.

2. Status of Inspection Program is a Category I Indicator. We consider the following comment to be significant.

Comment

The inspection program should be adequate to assess licensee compliance with State regulations and license conditions. The State does not currently have an inspection program capable of assessing license compliance for numerous licensee categories. This situation is due to the loss of inspection personnel and the fact that the program has not obtained technical expertise to assess licensee compliance.

The inspection staff was unable to provide an accurate accounting of licenses that were due (or overdue) for inspection. The inspection tracking system was last audited in October 1991. Updates to the tracking system since then are incomplete and, in some cases, inaccurate. The evaluation of the tracking system was complicated by the fact that numerous inspection reports were missing from the license files.

Recommendation

We recommend that the State immediately obtain qualified technical support to allow the assessment of licensee compliance for all licenses.

We recommend that the inspection tracking system be evaluated and maintained in an accurate, updated fashion.

3. Technical Quality of Licensing Actions is a Category I Indicator. We consider the following comment to be significant.

Comment

The technical quality of licensing actions appears to have been slightly improved since the last follow-up review until the recent resignation of the two senior staff members. The current licensing staff has very little experience and is not qualified, at this time, to review complex licensing actions. The casework review performed by the NRC identified several errors which were discussed with Iowa licensing staff.

At the time of the 1991 follow-up review, licensing audit checklists were provided to the State to help with casework audits as errors in licensing actions were noted which should have been detected during the management review of the completed actions. The State's January 6, 1992 response letter stated that the checklists would be used in casework audits, henceforth. The current review identified that the checklists have not been used since the last follow-up review, contrary to the January 6, 1992 response letter.

The last follow-up review identified a number of licensing action submittals from the University of Iowa which had not been evaluated by Iowa staff. The response letter stated that the University submittals had been evaluated and incorporated into the license by amendment. The current review was unable to confirm whether the submittals were actually incorporated into the license. The current license does not reflect the appropriate changes with regard to the University's waste storage and incineration program. Previous license amendments were missing from the license file which may have incorporated the changes, which may have later been removed. Current licensing staff personnel were unable to provide any explanation for the situation and were not able to locate the missing amendments.

Recommendation

We recommend that the State correct the licensing errors that were identified by NRC personnel and use audit checklists in the future to help identify errors and inconsistencies in licensing actions.

We recommend that personnel be given extensive training in licensing and that licensing training plans be drawn up for each reviewer to assess progress and to provide direction to the reviewers.

We recommend that the State search for the missing University of Iowa license documents, conferring with former licensing personnel, if necessary, to resolve this issue. The license should be modified, if appropriate.

4. Staffing Level is a Category II Indicator. We consider the following comment to be significant.

Comment

A continuing staffing problem has existed in the Iowa radioactive materials program for years. At the time of the 1991 follow-up review, the State had a technical staffing level of 0.76 person-year per 100 licenses. That level was significantly less than the 1.0 to 1.5 level recommended by the NRC and was also less than the staffing level noted during the 1990 review.

As a result of the recent resignations of the two senior technical staff, the program is currently staffed by 1.75 working technical staff (junior grade) persons detailed to the program. Considering the State's 227 licenses, the staffing level is 0.77 person-year per 100 licenses. The lack of sufficient staff, and particularly senior staff, leaves the program in a very vulnerable position as the personnel have a heavy workload to maintain the program and are not sufficiently trained to perform basic functions such as the licensing and inspection of medical programs.

The NRC was notified by Governor Branstad's office on September 21, 1992 that two staff positions had been approved for the program. A technical staff of 2.3 to 3.4 is required to meet the recommended staffing levels. At least one of the technical staff hired should be an individual with considerable experience in health physics.

Recommendation

We recommend that, considering the current state of the program, that the State maintain the staffing level at the upper end of the suggested range so as to enable the program to develop beyond a borderline adequate and compatible program.

5. Staff Supervision is a Category II Indicator. We consider the following comment to be significant.

Comment

The 1991 follow-up review identified a problem with staff supervision due to lack of staffing and the assignment of additional responsibilities to the program Director and Supervisor. The Supervisor has since left the Iowa program and has not yet been replaced. The Director still has a large number of programs under his authority which limits his involvement in the operations of the Radioactive Materials program. The lack of staffing, in particular senior technical staff, also contributes to the supervision problem.

Recommendation

We recommend that the Radioactive Materials program appoint an individual to a Supervisor or Manager position for oversight of day-to-day activities in the program. We also recommend that the program Director spend increased time in the program for purposes of program oversight, personnel development and long-term planning.

6. Office Equipment and Support Services is a Category II Indicator.

Comment

Prior to the last follow-up review, the program lost the secretary who developed and maintained the computerized tracking system. The system provides program management with readily available information on the licensing backlog, due and overdue inspections, inspection history, licensees categorized by type, county, fees, etc. The current secretary who is assigned half time to the radioactive materials program, has not been trained on the use of the system. One of the technical staff has limited knowledge of the system. Since the last review, technical staff has reverted back to a handwritten tracking system. The manual system takes additional technical staff effort which could be better used conducting inspections or performing license reviews and the system limits management's ability to review program parameters.

Recommendation

We recommend that the State provide full-time secretarial support to the program. The individual(s) should have adequate training and experience with computers and software packages to use and maintain the program's computerized tracking system.

7. Licensing Procedures is a Category II Indicator.Comment

The licensing backlog is currently about 20%. Licensing staff is limited as to their current ability to evaluate complex licensing actions due to recent staff turnover.

The January 6, 1992 response letter to the 1991 follow-up review stated that licensing notebooks have been developed. This review identified that only one licensing notebook had been prepared and that was done prior to the 1991 review. Many of the omissions and errors found during our casework review may not have occurred if the licensing staff had access to a good set of documented procedures, guidance and licensing examples (licensing notebooks).

The January 6, 1992 response letter also stated that pertinent NRC Information Notices provided to the State had been sent out. This review identified that the Information Notices, which warn licensees of safety concerns, had not been sent out to licensees as stated. Subsequent to this review, on September 15, 1992, the Notices were sent to Iowa licensees.

Licensing files should be maintained in an orderly fashion to allow expedient, accurate retrieval of information. The casework review identified that approximately 25% of the licensing files reviewed had missing or misfiled documents, including 8 inspection reports missing from 26 files reviewed.

Recommendation

We recommend that a plan be developed for reducing the licensing backlog. The plan should include milestones for assessing progress. The State may wish to confer with Region III for assistance with complex license actions.

We recommend that licensing notebooks be prepared for all types of licenses which are reviewed.

We recommend that a system be developed to maintain the license files in an orderly fashion and that the files be audited periodically to ensure that filing errors are corrected. We also recommend that inspection reports be tracked to insure that they are placed in the licensing files.

8. Inspection Procedures is a Category II Indicator.Comment

Written inspection procedures have not been issued to the Radioactive Materials program technical staff. Procedures have not been provided to the staff to establish policies for conducting unannounced inspections, follow-up and closeout of previous violations, performing exit interviews with licensee management, interviewing workers and writing inspection reports and notices of violation. Since the senior

inspection personnel have left the program, the current inspectors do not have the benefit of their knowledge and have no written procedures to help them understand the techniques for performing an inspection. Due to the staffing shortage and personnel turnover, the writing of inspection procedures has been assigned a low priority. Only two draft procedures have been prepared, both relating to the radon program.

Recommendation

We recommend that the State place priority on the development and implementation of inspection procedures to benefit the personnel who are presently learning to perform inspections as well as those personnel who are to be hired in the near future. We think that the State's proposal to hire a consultant to draw up the procedures and train personnel in their use is a viable option.

9. Administrative Procedures is a Category II Indicator.

Comment

The State does not have a set of written procedures describing the administrative aspects of the Radioactive Materials program. Procedures have not been documented for handling incoming mail from licensees, filing license documents, maintaining license files, processing fees, assigning license numbers, entering new licenses into the inspection system, tracking expired licenses, tracking licenses due for inspection, etc. The program secretary, assigned to the program for a few months, was unable to explain how many of the above procedures were performed and did not have access to written procedures to help her learn the systems.

Recommendation

We recommend that the State prepare written procedures for administrative functions in the program. The procedures should be taught to the secretarial/administrative staff so that the technical staff is not burdened performing administrative functions and can concentrate on technical issues.

10. Confirmatory Measurements is a Category II Indicator.

Comment

Survey instruments used to perform confirmatory measurements during inspections should be calibrated within the same time interval as required for the licensee being inspected (e.g., radiography licensees must calibrate instruments at three-month intervals). No calibration reports for any of the program's instruments were dated after November 1991. At least one radiography inspection, with confirmatory measurements, has been performed by the Iowa inspectors three months after the last calibration of the program's survey instruments.

Recommendation

We recommend that a "tickler file" system be established for survey instrument calibrations and that prior to performing confirmatory measurements, the survey instrument's last calibration date be verified.

11. Management is a Category II Indicator.Comment

Supervisory review of inspection reports should be performed so that program management may ensure appropriate and consistent inspection and enforcement actions. Eight of 26 inspection reports reviewed during the casework audit did not have approval signatures. A similar supervisory review of complex licensing actions should be performed. In June 1992, the University of Iowa license (Type A broadscope) was renewed and there is no evidence of a supervisory review.

Recommendation

We recommend that program management perform reviews of all inspection reports and of significant licensing actions.

12. Training is a Category II Indicator.Comment

The Radioactive Materials program staff should be afforded opportunities for training that are consistent with the needs of the program. In early 1992, the Agreement States Officer offered to arrange licensing training in Region III for Mr. McGhee. He was unable to attend what would have been valuable training due to a temporary prohibition on out-of-state travel.

Recommendation

We recommend that future training courses which are important for the development of key program personnel be given priority authorization.

SUMMARY OF DISCUSSIONS WITH STATE REPRESENTATIVES

Ms. Holt and Mr. Lynch presented the results of this follow-up program review to Messrs. Atchison, Kelly, Fries and Flater during a summary meeting held on September 4, 1992. Mr. Kammerer, Director, Office of State Programs and Mr. Davis, Regional Administrator, Region III, also, participated in the meeting.

The State was informed that the Radioactive Materials program was in critical shape and that significant actions must be taken immediately to improve the program or the NRC would consider initiating the reassertion of authority over Iowa licensees.

The staffing problem was discussed in detail, which is more serious now than at the time of the last review due to the resignation of the two experienced licensing/inspection people. The NRC expressed concern that trained personnel are not currently available to license or inspect complex licensee programs, including medical and broadscope licenses.

Mr. Kelly discussed a planned reorganization which would allow the program Director more time to manage the Radioactive Materials program. This move was applauded by the NRC as the lack of management supervision was identified as a program weakness during the past three reviews.

Mr. Kammerer stated that he intended, in the near future, to call the Iowa governor's office to discuss problems identified during the review, particularly the staffing issue.

Noting the comments made about administration deficiencies in the program,

Mr. Atchison immediately committed to obtain contractual support to solve some of those problems.

The NRC committed to providing short-term support to the Iowa program. Region III arranged to have a Section Chief provide licensing training to the license reviewers and encouraged the State to cross-train other Bureau personnel in this type of specialized training so that additional support is available in the event of another staffing shortage. Region III also informed the State that Mr. Lynch would be available on a continuing basis to assist and train employees. The State was also encouraged to accompany Region III inspectors on materials inspections and to contact other Agreement State programs for similar assistance.

Mr. Atchison was informed that the results of the review would be reported in a letter to him from Mr. Kammerer and that a written response would be requested.

Mr. Atchison and Mr. Kelly then thanked the NRC for their past and anticipated future assistance in our mutual goal of public health and safety.