

DATED: SEPT 10, 1992

Judith M. Espinosa, Secretary
Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502

Dear Ms. Espinosa:

This confirms the discussion Robert J. Doda and Richard L. Blanton held with Kathleen M. Sisneros, Director, Water and Waste Management Division, and Benito Garcia, and William Floyd of the Hazardous and Radioactive Materials Bureau on August 14, 1992, in Santa Fe, following our 1992 review of the New Mexico radiation control program.

As a result of our review of the State's program and the routine exchange of information between the Nuclear Regulatory Commission (NRC) and the State of New Mexico, the staff determined that the New Mexico radiation control program for the regulation of agreement materials is adequate to protect the public health and safety. However, a finding that the program is compatible with the Commission's program could not be made due to five regulatory requirements that have not been adopted within the three-year period allowed by the NRC: (1) bankruptcy notification, (2) quarterly audit of the performance of radiographers, (3) well logging requirements, (4) NVLAP certification of dosimetry processors, and (5) decommissioning requirements. We recognize that the NVLAP certification requirement is administratively covered, in the interim, through New Mexico's certification program for service companies, and that New Mexico currently may not have any licensees that meet decommissioning requirements. Three of these amendments were found overdue for adoption during our previous program review of August 1990. We request upper management's direct attention to this matter and we would appreciate a schedule for completion of the revisions to the regulations.

Overall, there has been marked improvement in the technical aspects of the New Mexico radiation control program when compared to previous reviews. The Bureau has an adequate number of staff members performing agreement materials work, and there has been less turnover of key staff members during the review period.

We wish to commend the Hazardous and Radioactive Materials Bureau for their efforts in completing 255 inspections during the current review period with the result that the Bureau has no overdue inspections for any State licensees at the present time. The Bureau has availed itself of many training courses for its staff during the review period.

An explanation of our policies and practices for reviewing Agreement State programs is attached as Enclosure 1.

Enclosure 2 contains our summary of assessments regarding the program. In addition to the comment and recommendation regarding the lack of fully compatible regulations, two other minor comments and recommendations are included regarding other aspects of the program. These were discussed with Benito Garcia and William Floyd during the week of the review. We request specific responses from the State on the current review comments and recommendations in Enclosure 2.

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.

I appreciate the courtesy and cooperation you and your staff extended to Mr. Doda and Mr. Blanton during the review meeting. I am looking forward to your comments regarding our findings and your staff responses to the Enclosure 2 recommendations.

Sincerely,

Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/enclosures:
J. M. Taylor, Executive Director for Operations, NRC
J. L. Milhoan, Regional Administrator, RIV, NRC
B. Garcia, Chief, Hazardous and Radioactive Materials Bureau
State Liaison Officer
NRC Public Document Room
State Public Document Room

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 State Liaison Officer
 NRC Public Document Room
 State Public Document Room

bcc w/encls:

The Chairman
 Commissioner Rogers
 Commissioner Curtiss
 Commissioner Remick
 Commissioner de Planque

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*See previous concurrence.

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DTE	8/ /92	8/ /92	8/ /92			

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 NEW MEXICO RADIATION CONTROL PROGRAM
AUGUST 17, 1990 TO AUGUST 14, 1992

SCOPE OF REVIEW

This 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 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, technical evaluation of selected license and compliance files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review.

The 14th Regulatory Program Review meeting with New Mexico representatives was held during the period of August 10-14, 1992, in Santa Fe, New Mexico. The State was represented by Benito Garcia, Chief, Hazardous and Radioactive Materials Bureau, and William Floyd, Program Manager, Radiation Section. The NRC was represented by Robert J. Doda, State Agreements Officer, Region IV, and Richard L. Blanton, Office of State Programs.

A review of selected license and compliance files was conducted during August 11-12, 1992. A review of legislation and regulations, organization, management and administration, and personnel was conducted on August 13, 1992. In addition to the routine office review, two accompaniments of State inspectors, Jim Seubert and Ralph Manchego, were made at a GL-distributor licensee, TMA Eberline, License Number GL-225, on August 10, 1992, in Albuquerque, New Mexico; and at a source material processor licensee, Santa Fe Alloys, License Number DU-190, on August 13, 1992, in Santa Fe, New Mexico.

A summary meeting regarding the results of the regulatory program review was held with Kathleen M. Sisneros, Director, Water and Waste Management Division, Environment Department, and Benito Garcia and William Floyd on August 14, 1992, in Santa Fe, New Mexico.

CONCLUSION

As a result of our review of the State's program and the routine exchange of information between the NRC and the State of New Mexico the staff determined that the New Mexico program for the regulation of agreement materials is adequate to protect the public health and safety. However, a finding that the program is compatible with the NRC's program for the regulation of similar materials could not be made since five regulatory requirements have not been adopted within the three-year period allowed by the NRC.

STATUS OF PROGRAM RELATED TO PREVIOUS NRC FINDINGS

The previous NRC program review was concluded on August 17, 1990, and comments and recommendations were sent to the State in a letter dated September 27, 1990. At that time, the program was found to be adequate to protect the public health and safety but was not found to be fully compatible with the

ENCLOSURE 2

NRC's program for the regulation of similar materials, because of three overdue compatibility regulations.

The comments and recommendations from the previous program review were followed up and the State's responses were evaluated for adequacy. All previous comments and recommendations have been closed out, except for a repeat finding of overdue compatibility regulations.

CURRENT REVIEW COMMENTS AND RECOMMENDATIONS

The New Mexico radiation control program (RCP) satisfies the Guidelines in 27 of the 30 indicators. The State did not meet the Guidelines in three Category I indicators. Our comment and recommendation concerning the Status and Compatibility of Regulations is significant and has precluded a finding of compatibility for the New Mexico program until such time that the necessary five regulatory amendments are promulgated in the New Mexico radiation control regulations. The other two comments and recommendations are of minor significance, and the State has already taken some actions on these recommendations.

1. Status and Compatibility of Regulations (Category I Indicator)Comment

The review of the State's radiation control regulations disclosed that five regulatory amendments, which are matters of compatibility, have not been adopted by the State within a three-year period after adoption by the NRC. These amendments deal with a bankruptcy notification, decommissioning requirements, NVLAP certification of dosimetry processors, well logging requirements, and a quarterly audit of the performance of radiographers. We recognize that the NVLAP certification requirement is administratively covered through New Mexico's certification program for service companies, and that New Mexico may not currently have any licensees that meet decommissioning requirements. We believe, for the longer term, that these requirements should be added to New Mexico's radiation control regulations. We noted that some efforts have begun on drafting these rules but, nevertheless, the Bureau was unable to even estimate when further resources will be applied to a revision of the State's radiation control regulations.

Recommendation

We recommend these amendments, and any others approaching the three-year period allowed after NRC adoption, be promulgated as effective State radiation control regulations. Other compatibility regulations coming due in the near future include:

	<u>Rule Summary</u>	<u>10 CFR Part Equivalent</u>	<u>Effective Date of State Rule for Compatibility</u>
1.	Emergency Plans for Certain Licensees	Parts 30, 40, 70	April 7, 1993
2.	Safety Requirements for Radiographic Equipment	Part 34	January 10, 1994
3.	Standards for Protection Against Radiation	Part 20	January 1, 1994

2. Technical Quality of Licensing Actions (Category I Indicator)Comment

A number of minor errors were found during the review of the license files. These included typographical errors, omissions, outdated license conditions and missing or misfiled documentation. Potentially more serious problems included: (1) a license on which a radiopharmacist was listed as an authorized medical user, (2) a case in which a licensee notified the State of a change to its facility for the use of radioactive material but the change was not incorporated into the license, and (3) a case in which a

licensee was authorized to store for decay radionuclides with half lives up to 88 days without a documented rationale for the extension beyond the 65 days allowed in a standard license condition. These problems appear to have been caused by reassigning experienced licensing staff to perform inspections leaving the remaining licensing staff with the least experience performing all the licensing reviews. Also, computer difficulties during the initial phases of a data management system for licenses caused some of the typing errors. All of these cases were discussed with the Bureau's technical staff during the review meeting and many have already been resolved. Also, we should note that recent administrative changes are expected to minimize future problems of this sort.

Recommendation

We recommend that program management staff improve the Bureau's quality assurance program for licensing actions in order to reduce the incidence of these minor errors.

3. Status of Inspection Program (Category I Indicator)

Comment

The review meeting disclosed that the TMA Eberline license (No. GL225) had a license condition that required a quarterly report to the Bureau on the devices distributed to general licensees. Recently, these reports were not being received by the State, apparently, due to an oversight by the licensee. We believe this is a minor comment since the licensee has these detailed records in its Albuquerque office. (Note, these records had just been reviewed during an accompaniment inspection on August 10, 1992, by the Region IV State Agreements Officer with a New Mexico inspector.)

Recommendation

We recommend that the Bureau confirm that these quarterly reports are submitted as required in the license.

SUMMARY DISCUSSIONS WITH STATE REPRESENTATIVES

A summary meeting to present the results of the regulatory program review was held with Kathleen M. Sisneros, Director, Water and Waste Management Division, Environment Department, and Benito Garcia, and William Floyd, on August 14, 1992. The scope and findings of the review were discussed. She was informed of the one significant Category I finding regarding the compatibility of the State's radiation control regulations. Ms. Sisneros said the State would consider the efforts necessary for a revision of the regulations to include the five amendments that are necessary for compatibility. During this discussion she also expressed her concern for adopting the more demanding regulations that are coming due for compatibility purposes; such as, emergency plans, and the new Part 20 requirements. She believes this places a great burden on the smaller Agreement State programs to maintain compatibility with the NRC's program.

She also expressed the State's appreciation for past NRC assistance and training for the Bureau's staff. She said the Department will continue to support the radiation control program, any NRC-sponsored training courses, and cooperative efforts with the NRC and other Agreement State Programs.

A closeout discussion with the RCP technical staff was conducted on August 12, 1992. The State was represented by William Floyd, and his radiation control staff. Several general and specific questions were raised by the State representatives. The review guideline questions and the State's responses were discussed in detail. In addition, the results of the license and

compliance casework reviews were provided to the staff for discussion. An instructional phase was included to reinforce the proper methods to be used by State personnel when notifying NRC of significant incidents, such as abnormal occurrences, transportation accidents, or events having media interest.