

DATED: APR 13, 1993

Robert C. Harder, Ph.D., Secretary
Department of Health and Environment
Landon State Office Building
Topeka, KS 66612-1290

Dear Dr. Harder:

This confirms the discussions Robert Doda had with you on February 23, 1993, and with Ronald F. Hammerschmidt, Deputy Director, Division of Environment, John C. Irwin, Chief, Bureau of Air and Radiation, and Gerald Allen, Chief, X-Ray and Radioactive Materials Control Section, on February 25, 1993 in Topeka, Kansas, following our 1993 routine review of the Kansas 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 Kansas, the staff determined that the Kansas 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 six regulatory requirements that have not been adopted within the three-year period allowed by the NRC: (1) quarterly audit of the performance of radiographers (July 1989), (2) bankruptcy notification (February 1990), (3) misadministration reporting requirements (April 1990), (4) well logging requirements (July 1990), (5) NVLAP certification of dosimetry processors (February 1991), and (6) decommissioning requirements (July 1991). This is the third NRC review of the Kansas program in a row where the Kansas program was not found to have fully compatible regulations in place. The Kansas radiation control regulations have not been revised for compatibility purposes since May 1986. Due to the seriousness of this problem with adopting compatible regulations, Robert J. Doda met with you on February 23, 1993. During that meeting, you pledged your full support in expediting the adoption of these regulations. We appreciate your early actions, taken during the week of the review, to move these draft regulations through the adoption process. However, we need a firm schedule for the completion of the revisions of the regulations.

As discussed with you, Agreement States are expected to adopt regulations that are deemed to be matters of compatibility within a three-year period after promulgation by the NRC. Not discussed with you personally, but discussed with your staff later in the week, was the fact that several other regulations are coming due for compatibility purposes in the near future (see Enclosure 2, Comment No. 1). Principal among these is Part 20, "Standards for Protection Against Radiation." This part, which is formatted on computer disc, should be adopted by all Agreement States by January 1, 1994.

Enclosure 2 contains our summary of assessments regarding the program. In addition to the comment and recommendation regarding the lack of fully compatible regulations, one other comment and recommendation was included regarding the inspection status of the program. These comments and recommendations were discussed with Mr. Allen and his staff during the week of the review. We would like to receive your responses to our recommendations for program improvement.

Our review disclosed that all other program indicators were within NRC guidelines. However, a number of other technical matters were discussed with the radiation control staff and resolved during the course of the review meeting. An explanation of our policies and practices for reviewing Agreement State programs is attached as Enclosure 1.

We wish to commend the Bureau of Air and Radiation for conducting a comprehensive training program for staff personnel within the Bureau. We note that the Bureau has availed itself of many NRC training courses for its radiation control staff during the review period.

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 during the review meeting. I am looking forward to your comments regarding our findings, which are contained in the Enclosure 2 recommendations.

Sincerely,

Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/encls:
J. M. Taylor, Executive Director for Operations, NRC
J. L. Milhoan, Regional Administrator, RIV, NRC
G. W. Allen, Chief, Kansas Dept. of Health
State Liaison Officer
NRC Public Document Room
State Public Document Room

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cc w/encls:

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J. L. Milhoan, Regional Administrator, RIV, NRC
G. W. Allen, Chief, Kansas Dept. of Health
State Liaison Officer
NRC Public Document Room
State Public Document Room

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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 one or more 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 the 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 Category I comments are noted as significant, 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 for improvement in particular program areas is critical. The NRC would request an immediate response. 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.

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. 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.

ENCLOSURE 1

SUMMARY OF ASSESSMENTS AND COMMENTS
FOR THE KANSAS RADIATION CONTROL PROGRAM
FEBRUARY 1, 1991 TO FEBRUARY 26, 1993

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 the Office of State Programs. The State's program was reviewed against the 30 program indicators provided in the Guidelines. The review included 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 26th Regulatory Program Review meeting with Kansas representatives' was held during the period of February 22 through February 26, 1993 in Topeka, Kansas. The State was represented by Gerald Allen, Chief, X-Ray and Radioactive Materials Control Section, and Harold Spiker, Chief, Radiological Environmental Surveillance and Emergency Planning Section. The NRC was represented by Robert J. Doda, Region IV State Agreements Officer.

A review of selected license and compliance files was conducted during February 23-24, 1993, a review of legislation and regulations, organization, management and administration, and personnel was conducted on February 22, 1993. A special meeting regarding a serious problem with overdue compatibility regulations was held with Robert C. Harder, Secretary, Department of Health and Environment, on February 23, 1993 in Topeka, Kansas. Also a summary meeting was held with Ronald F. Hammerschmidt, Deputy Director, Division of Environment, John C. Irwin, Chief, Bureau of Air and Radiation, and Gerald Allen, X-Ray and Radioactive Materials Control Section, on February 25, 1993.

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 Kansas, the staff determined that the Kansas program for the regulation of agreement materials is adequate to protect 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 due to the fact that six regulatory requirements have not been adopted within the three-year period allowed by NRC. This is the third consecutive routine program review the Kansas program was found not having fully compatible regulations in place.

ENCLOSURE 2

STATUS OF PROGRAM RELATED TO PREVIOUS NRC FINDINGS

The previous NRC program review was concluded on February 1, 1991, and comments and recommendations were sent to the State in a letter dated March 26, 1991. 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 NRC's program for the regulation of similar materials, because of certain 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 Kansas Radiation Control Program (RCP) satisfies the Guidelines in 28 of the 30 indicators. The State did not meet the Guidelines in two 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 Kansas program until such time that the necessary six regulatory amendments are promulgated in the Kansas radiation control regulations. The other comment and recommendation is of minor significance, and the State has already taken some actions on this recommendation.

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

The review of the State's radiation control regulations disclosed that six regulatory amendments, which are matters of compatibility, have not been adopted by the State within a three-year period after publication by the NRC. These amendments deal with a bankruptcy reporting requirement, well logging requirements, a radiography requirement relating to a quarterly audit of radiographers, a NVLAP certification requirement, a decommissioning requirement, and a misadministration reporting requirement. We noted that all of these rules have been drafted and included in a current revision of the State's radiation control regulations. The Bureau believes that these rules will be adopted within a short time. Also, in a special meeting with the new Secretary of the Department of Health and Environment on February 23, 1993, Secretary Harder pledged his full support in expediting the adoption of these regulations. Secretary Harder took several steps

during the week of the review to move the draft regulations to the Attorney General's Office for final review.

Recommendation

We recommend that 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 due in the near future include:

- "Emergency Planning Rule," 10 CFR Parts 30, 40, and 70 amendments (54 FR 14051) needed by April 7, 1993.
- "Standards for Protection Against Radiation," 10 CFR Part 20 amendment (56 FR 61352) needed by January 1, 1994.
- "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment (55 FR 843) needed by January 10, 1994.
- "Notification of Incidents," 10 CFR Parts 20, 31, 34, 39, 40, and 70 amendments (55 FR 40757) needed by October 15, 1994.
- "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment (56 FR 153) needed by January 27, 1995.

2. Status of Inspection Program (Category I Indicator)

Comment

Our review disclosed that 12 priority 1 and 2 licenses were overdue for inspection by more than 50 percent of the inspection frequency. This comment is of minor significance since four of these inspections are for well logging licensees, who have had few operational activities during the last two years, and the others are scheduled for early inspections. The Bureau is just completing a significant effort at bringing all overdue inspections up to date (113 inspections were completed during the 1992 review period).

Recommendation

We recommend that Bureau management complete this minor backlog of the more significant State licensee inspections.

SUMMARY DISCUSSIONS WITH STATE REPRESENTATIVES

A special meeting was held with Robert C. Harder, Secretary, Department of Health and Environment, on February 23, 1993, due to the seriousness of a number of compatibility regulations that were overdue for adoption. The newly appointed Secretary was informed that this was the third consecutive program review where Kansas had not adopted regulations, which were matters of compatibility, within the three-year period allowed by the NRC. Dr. Harder pledged his full support in correcting this problem. In fact, during the week of the review the draft regulations were pushed through certain administrative aspects of the State's process, which had previously held up the adoption process.

A summary meeting to present the results of the regulatory program review was held with Ronald F. Hammerschmidt, Deputy Director, Division of Environment, Department of Health and Environment, John Irwin, Chief, Bureau of Air and Radiation, and Gerald Allen, Chief, X-Ray and Radioactive Materials Control Section, on February 25, 1993. The scope and findings of the review were discussed. They were informed of the one significant Category I finding regarding the compatibility of the State's radiation control regulations. They stated that the State would proceed directly with the revision of the State's regulations which already includes the six amendments that are necessary for compatibility. During this discussion they also expressed their concern for adopting the other more demanding regulations that are coming due for compatibility purposes; such as, safety requirements for radiographic equipment and the new Part 20 requirements. They believe this places a great burden on smaller Agreement State programs ability to maintain compatibility with the NRC's program. Also, the importance of Agreement States meeting the January 1, 1994 date for adoption of the new Part 20 regulations was discussed.

Mr. Hammerschmidt expressed the State's appreciation for past NRC assistance and training for the Bureau's staff. He stated that the Department would 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 February 26, 1993. The State was represented by Gerald Allen, 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.