

DATED: MAY 21, 1993

Mr. Thomas E. Brown, Jr.
Interim Commissioner
Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Mr. Brown:

This is to confirm the discussion Mr. Richard L. Woodruff, NRC Region II State Agreements Officer, held on March 24, 1993 with you and your staff following our review and evaluation of the State's 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 and the State of South Carolina, the staff determined that overall the South Carolina program for regulation of agreement materials is adequate to protect the public health and safety and is compatible with the Commission's program. However, the finding of compatibility is contingent upon the State's adoption of the proposed amendments to the regulations regarding "Financial Assurance and Recordkeeping for Decommissioning" and "Emergency Planning."

Status and Compatibility of Regulations is a Category I Indicator. For those regulations deemed a matter of compatibility by NRC, State regulations should be amended as soon as practicable but no later than three years after the effective date of the NRC regulation. South Carolina has proposed revisions to their regulations that are projected to become effective during the third calendar quarter of 1993, and that are needed for compatibility under the three-year criteria. Further explanation is provided on all other rules that are needed for compatibility under Enclosure 2, comment number 1. We request that the State place priority on this matter and keep our Region II office informed of the status of your proposed rules and the date when the rules become effective.

A significant effort was applied during the review to understand and become familiar with the new organization for the South Carolina radiation control program. On January 17, 1993, the Bureau of Radiological Health was transferred to the Department of Health Regulation Deputyship and all functions related to the Barnwell disposal facility, associated operations, and waste transportation were transferred to the Bureau of Solid and Hazardous Waste which will remain in the Department of Environmental Quality Control

Deputyship. We noted that all aspects of the 274b Agreement materials regulation will continue to remain in one State Agency, the Department of Health and Environmental Control. In addition, we noted that a memorandum of agreement is being drafted between the two Bureaus, the Bureau of Radiological Health and the Bureau of Solid and Hazardous Waste and we encourage the finalization of this agreement. We do not anticipate any problems with this reorganization and look forward to a continued outstanding administration of the Agreement program as in previous reviews.

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

Enclosure 2 contains comments regarding the technical aspects of our review of the program. These comments were discussed with Mr. Shealy and his staff during our exit meeting with them.

Mr. Shealy should be commended for his regulatory efforts at the Bureau of Radiological Health. South Carolina became an Agreement State on September 15, 1969, and has continued to have a strong Radiation Control Program throughout the years. The program has undergone nineteen reviews by NRC, and has remained adequate to protect public health and safety, and compatible with the NRC's program during this period.

We appreciate your continued support of the Radiation Control Program and their regulatory efforts to protect public health and safety. We also appreciate your cooperation with this office and the courtesy and cooperation extended by your staff to Mr. Woodruff and Mr. Lynch during the review.

Sincerely,

Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/encls: see next page

cc w/encls:

J. Taylor, Executive Director for
Operations, NRC

S. Ebnetter, Regional Administrator,
Region II, NRC

Heyward G. Shealy, Chief
Bureau of Radiological Health
SC DHEC

2600 Bull St.
Columbia, SC 29201

Virgil R. Autry, Director
Div. of Rad. Waste Management
Bureau of Solid and Hazardous Waste
2600 Bull St.

Columbia, SC 29201

NRC Public Document Room

Thomas E. Brown, Jr.

4

bcc w/encls:
The Chairman
Commissioner Rogers
Commissioner Curtis
Commissioner Remick
Commissioner de Planque

Distribution:
SA RF
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South Carolina File

OFC	RII:SAO	RII:DRSS	RII:RA	OSP:SA	OSP:SA:AD		
NME	RWoodruff	JStohr	SEbnetter	CMaupin	VMiller		
DTE	04/ /93	04/ /93	04/ /93	06/ /97	06/ /97		
OFC	OSP:DD	NMSS:D	OSP:D	DEDS	EDO		
NME	SSchwartz	RBernero	CKammerer	HLThompson	JMTaylor		
DTE	05/ /93	06/ /97	06/ /97	03/ /93	03/ /93		

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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
SOUTH CAROLINA RADIATION CONTROL PROGRAM
FOR THE PERIOD
MARCH 22, 1991 TO MARCH 24, 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 Agreement States Program, Office of State Programs. The review included discussions with program management and staff, accompaniments of state inspectors, technical evaluation of selected license files and compliance files, (casework) and the evaluation of the State's response to an NRC questionnaire that was sent to the State in preparation for the review.

The 19th regulatory program review meeting with South Carolina representatives was held during the periods of March 8-11, March 16-19, and March 24, 1993. Inspector accompaniments were conducted during the period of March 8-11, 1993, and the Office review was conducted in Columbia during the period of March 16-19, 1993. The State was represented by Heyward Shealy, Chief, Bureau of Radiological Health (BRH), and Virgil Autry, Director, Division of Radioactive Waste Management (DRWM), Bureau of Solid and Hazardous Waste. The NRC was represented by Richard Woodruff, Regional State Agreements Officer, Region II and James Lynch, Regional State Agreements Officer, Region III. A summary meeting regarding the results of the regulatory program review was held with Thomas E. Brown, Jr., Interim Commissioner, South Carolina Department of Health and Environmental Control (DHEC), and certain of his key managers on Wednesday, March 24, 1993. An exit meeting with Mr. Shealy and his technical staff was held on the morning of March 24, 1993.

CONCLUSION

The program for control of agreement materials is adequate to protect the public health and safety and is compatible with the regulatory program of the NRC. However, the finding of compatibility is contingent upon the State's adoption of the proposed amendments to the regulations regarding "Financial Assurance and Recordkeeping for Decommissioning" and "Emergency Planning."

STATUS OF PREVIOUS NRC COMMENTS AND RECOMMENDATIONS

Comments and recommendations from NRC's previous review were sent to the State in a letter dated June 28, 1991. All of these comments were satisfactorily resolved and as documented during our visit on March 31, 1992.

CURRENT REVIEW COMMENTS AND RECOMMENDATIONS

All thirty indicators were reviewed in depth and the State fully satisfies the guidelines in twenty-four of these indicators. Specific comments and recommendations for the six remaining indicators are as follows:

ENCLOSURE 2

1. Status and Compatibility of Regulations is a Category I Indicator. The following comment with our recommendation is made.

Comment

The State's regulations are compatible with the NRC regulations up to the 10 CFR Parts 30, 40, and 70 amendments on "Financial Assurance and Recordkeeping for Decommissioning" that became effective on July 27, 1988 (53 FR 24018).

The Program has drafted proposed revisions to their regulations and the regulations are projected to become effective during the third Calendar quarter of 1993. The regulation package contains proposed regulations that are equivalent to the following NRC regulations.

- "Emergency Planning," 10 CFR Parts 30, 40, and 70 amendments that became effective on April 7, 1990 (54 FR 14061) and should be adopted by the States by April 7, 1993.
- "Standards for Protection Against Radiation," 10 CFR Part 20 amendment (56 FR 61352) that was adopted on June 20, 1991, and will be implemented on January 1, 1994.
- "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment (55 FR 843) that became effective on January 10, 1991 and should be adopted by the States by January 10, 1994.
- "Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (56 FR 40757) that became effective on October 15, 1991 and should be adopted by the States by October 14, 1994.
- "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment (56 FR 34104) that became effective on January 27, 1992. Effective date for the States is January 27, 1995.

The above package of rules were discussed verbally during the review and the rules are being reviewed by the Regional State Agreements Officer. Comments will be provided to the State under separate cover from the Region II Office.

Recommendation:

It was recommended that the State continue its efforts to amend its regulations that are needed for compatibility, and to notify the Region II Office when the current package of rules become effective.

2. Quality of Emergency Planning is a Category I Indicator. The following comment with recommendation is made.

Comment

The State should have a written emergency plan that defines the responsibilities and actions to be taken by State Agencies. The plan should be specific as to persons responsible for initiating response actions, conducting operations and cleanup.

As a result of the internal reorganization of DHEC, several discussions were held with the managers of the affected Radiological programs. These discussions revealed the need for additional policy guidance concerning radiological emergency responsibilities of the Radiological Emergency Response Section (RERS), BRH, and DRWM, and detailed procedures for responding to events at material licensed facilities, transportation events, and LLRW site events.

The BRH and the DRWM programs maintain a Duty Officer roster and the technical staff have all been trained in radiological emergencies, and have extensive health physics training that provides for proper actions to be taken during radiological emergencies at licensed facilities and transportation type events, and the appropriate regulatory actions to be taken following the event. The staff also participate in fixed nuclear facility exercises and provide technical assistance on an as needed basis to the Radiological Emergency Response Section.

The importance of having personnel respond that are the most knowledgeable about the licensee's facilities, the materials and devices used under the license, and the licensee's Radiation Safety Organization was discussed. The technical staff located in BRH and DRWM should be involved as soon as possible upon the notification of an event at a BRH or DRWM licensed facility, and should manage the on-site control and corrective actions taken to protect public health and safety. This also provides for the taking of appropriate regulatory actions that may be needed, including incident investigations, follow-up on corrective actions taken by the licensee, incident documentation and reporting, and any possible enforcement actions that may be needed.

Recommendation

We recommend that the radiological emergency response policy guidance and procedures be reviewed with regard to the above comments, and be revised as needed to best serve public health and safety, and with the most effective utilization of the Department's resources.

3. Budget is a Category II Indicator. The following comment with our recommendation is made.

Comment

Operating funds should be sufficient to support program needs such as staff travel necessary to conduct an effective compliance program, instrumentation and other equipment, and administrative cost in operating the program.

- a. During our review of the DRWM budget, the Program Manager related that additional operating funds were needed to fully carry out the functions of the program, and that a request for an additional supplementary budget of \$39,000 was being prepared. This proposal was discussed during our exit meeting, and DHEC management appeared to be fully supportive of the proposal.
- b. Chem-Nuclear Systems, Inc., is required by regulation and license condition to conduct a performance assessment of the Barnwell Low-Level Waste site in preparation for the site to be turned over to the State. The State has determined that a "third party review" is needed of the performance assessment, and that additional monies need to be allocated for this contract. This topic was also discussed during the exit meeting and Mr. Shaw indicated that the State would pursue obtaining the needed funds for this project.

Recommendation

We recommend that the State continue their efforts to adequately fund the DRWM operating budget and the contract for the third party review of the site performance assessment.

4. Management is a Category II Indicator. The following comment with our recommendation is made.

Comment

Program management should perform periodic reviews of selected license cases handled by each reviewer and document the results. Complex licenses should receive second party review. Supervisory review of inspections, reports and enforcement actions should also be performed.

It was noted during the review that all licenses, inspection reports, and enforcement correspondence are reviewed and signed by the BRH Director. In addition, we believe that the technical supervisor of the Materials Program should perform a "first level" review of the licensing, inspection, and enforcement documents.

Recommendation

We recommend that all documents relative to licensing, inspection, and enforcement be reviewed by the Materials Section Director or supervisor.

5. Staffing Level is a Category II Indicator. The following comment with our recommendation is made.

The Program has 313 specific licenses that are currently being regulated with 4.0 technical FTEs or 1.3 persons per 100 licenses. In addition, 6.0 technical FTEs are being utilized in the LLW program at present.

Because of the reorganization of Department of Health and Environmental Control and the Bureau of Radiological Health, a Director's position was created to supervise the Radioactive Materials Program. The Bureau is in the process of obtaining approval for this position. This position as proposed is consistent with the other technical Director's positions in the Bureau organization. This position should be filled with an individual having the training and experience commensurate with the type of licenses regulated and the other regulatory functions provided by the program. We believe that this position should be approved and the vacancy filled as soon as possible.

Recommendation

We recommend that the State proceed with the approval of the Radioactive Materials Director position and the filling of this vacancy as soon as possible.

6. Licensing Procedures is a Category II Indicator. The following comment with our recommendation is made.

Comment

The RCP should have licensing policies that are consistent with current NRC practice. Under the NRC Exchange-of-Information program, we request summaries of statistical licensing and inspection data during our routine reviews, and also on an annual basis. The characterization of this data is critical for the evaluation of licensing and inspection data on a national basis.

The State's licensing policy allows for only seventeen license categories to be entered into the computer base. We believe that additional refinement of the license categories is needed to better characterize the data. In particular, it was observed from the statistical data that the State could not differentiate between "portable" and "fixed gauges," or between "institutional medical" and "private practice" categories. These categories also often have different inspection priorities.

A diskette was provided to the State during the review that lists all of the categories utilized by NRC, and a description of each category. States are not expected to utilize every category listed; however, we believe that the Program could benefit by revising their license categories to provide for better characterization by license type and/or the use of sub-categories. This has proven to be of value in other Programs when special mailings of regulatory documents are sent to selected categories of licensees, during the assessment and collection of fees, and for exchange of information.

Recommendation

We recommend that the State consider expanding the listing of license categories to better characterize the different uses, and to enhance other regulatory functions and the management of data.

SUMMARY DISCUSSIONS WITH STATE REPRESENTATIVES

A summary meeting to present the results of the regulatory program review meeting was held at 2:00 p.m. on Wednesday, March 24, 1993 with DHEC managers as follows:

- Thomas E. Brown, Jr., Interim Commissioner, Department of Health and Environmental Control (DHEC)
- R. Lewis Shaw, Deputy Commissioner, Environmental Quality Control
- J. Richard Coney, Deputy Commissioner, Health Regulation
- John T. McNeely, Assistant Deputy Commissioner, Health Regulation
- Hartsill W. Truesdale, Chief, Bureau of Solid & Hazardous Waste
- Heyward G. Shealy, Chief, Bureau of Radiological Health
- Max K. Batavia, Assistant Chief, Bureau of Radiological Health
- Virgil R. Autry, Director, Division of Radioactive Waste Management
- Ronald W. Kinney, Director, Division of Waste Assessment and Emergency Response

The scope of the review was discussed along with specific NRC staff comments and recommendations on: (1) Status and Compatibility of Regulations; (2) Quality of Emergency Planning; (3) Budget; and (4) Staff Continuity. In addition, considerable discussion was held on the merits of maintaining the Radiation Control Program under one State agency. Mr. Shaw related that a draft Intra-departmental Memorandum of Agreement for Support Services between the two Bureau's would be finalized in the near future and he did not foresee a continuity problem with the new organization.

Mr. Brown was informed that the program was adequate and compatible, contingent upon the State's final adoption of the proposed regulation package containing amendments regarding "Financial Assurance and Recordkeeping for Decommissioning" and "Emergency Planning." Also, Mr. Brown was informed that the review (including the technical comments) would be reported to the State in a letter signed by the Director, Office of State Programs, and that a written reply would be requested.

In reply, Mr. Brown related that he would be looking forward to our letter, and he was appreciative of our comments and recommendations.