

DATED: FEB 9, 1994; SIGNED BY RICHARD BANGART

Patrick Meehan, M.D., Director
Division of Public Health Services
Health and Welfare Building
6 Hazen Drive
Concord, New Hampshire 03301

Dear Dr. Meehan:

This letter is to confirm the discussion held with you and members of your staff on July 1, 1993, at the conclusion of the follow-up review and evaluation of the State's radiation control program. The follow-up review focused on the State's actions in addressing the NRC recommendations from the June 1992 review in which we were unable to offer findings of adequacy and compatibility of your program. Adequacy was withheld because of the status of the licensing and inspection programs and a finding of compatibility was withheld because the decommissioning rule had not been adopted.

Our follow-up review was held during the period of June 29 - July 1, 1993, during which we observed that the State was making considerable progress. As a result of our follow-up review of the State's program and the routine exchange of information between the NRC and the State of New Hampshire, the staff is able to offer a finding of adequacy for your program to protect public health and safety.

We commend the State in its efforts in the licensing and inspection programs. During the June 1992 review of your program, we noted that the Bureau had a licensing backlog of 68 actions. During this follow-up review, as a result of your staff's additional effort and the hiring of three health physicists, there was no licensing backlog. With regard to the inspection program, during our June 1992 review, there were 19 inspections overdue. During this follow-up review, we found that there were no overdue inspections.

Status and Compatibility of Regulations is a Category I Indicator. We continue to withhold a compatibility finding pending your adoption of regulations that are deemed by the NRC to be matters of compatibility: (1) Decommissioning Rule, (2) Emergency Planning Rule, (3) Standards for Protection Against Radiation and (4) Safety Requirements for Radiographic equipment. The decommissioning rule was due by July 27, 1991; the emergency planning rule was due by April 7 1993; the standards for protection rule was due by January 1, 1994; and the radiographic rule was due by January 10, 1994. One additional rule will also

require promulgation in 1994, "Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (56 FR 40757) needed by October 15, 1994. Since the need to withhold compatibility continues from previous reviews, we plan to monitor your progress in developing these regulations. In addition, we offer our technical assistance, if needed, to expedite your rulemaking process. We trust that you share our view about the importance of developing and maintaining a program that is both adequate and compatible. Please notify us when these rules are adopted.

Although not a matter directly covered by this review, I would like to bring to your attention four additional rules which will need to be adopted by the State in the future. These regulations are:

1. "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment (56 FR 34104) which is needed by January 27, 1995;
2. "Licenses and Radiation Safety Requirements for Irradiators," 10 CFR Part 36 (58 FR 7715) which will be needed by July 1, 1996;
3. "Licensing Requirements for Land Disposal of Radioactive Wastes," 10 CFR Part 61 (58 FR 33886) which is needed by July 22, 1996; and
4. "Decommissioning Recordkeeping and License Termination: Documentation Additions," 10 CFR Parts 30, 40, 70, and 72 (58 FR 39628) which is needed by October 25, 1996.

Enclosure 1 contains an explanation of our policies and practices for reviewing Agreement State programs. Enclosure 2 is a summary of other review findings which were discussed with you and the staff of the Radiological Health Bureau. These discussions also included your corrective actions associated with the findings of the June 1992 Review. In accordance with NRC practice, I am also enclosing a copy of this letter for placement in the State's Public Document Room to be made available for public review.

Patrick Meehan, M.D.

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I appreciate the courtesy and cooperation extended to the NRC staff during the review. I am looking forward to your comments regarding our findings and your responses to the Enclosure 2 comments. Please respond within 30-days of the receipt of this letter.

Sincerely,

Richard L. Bangart, Director
Office of State Programs

Enclosures:
As stated

cc w/encls:
Jack Stanton, Assistant Director
New Hampshire Division of Public Health
Diane Tefft, Administrator
New Hampshire Bureau of Radiological Health
George Iverson, Director
New Hampshire Office of Emergency Management and
State Liaison Officer
State Public Document Room
NRC Public Document Room

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bcc: w/encls.
The Chairman
Commissioner Rogers
Commissioner Remick
Commissioner de Planque
James M. Taylor, Executive Director for Operations, NRC
Thomas T. Martin, Regional Administrator, Region I
Dennis Rathbun, Director, Office of Congressional Affairs
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J.M. Taylor

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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 for 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 review 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 remove 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 HAMPSHIRE RADIATION CONTROL PROGRAM
FOLLOW-UP REVIEW

SCOPE OF REVIEW

This review was a Follow-up Review to evaluate the State's corrective actions in response to our comments made following the routine review held in June 1992.

The Follow-up Review was conducted during the period June 29 - July 1, 1993 in Concord, New Hampshire. The State was represented by Dr. Patrick Meehan, Director, Division of Public Health Services, Ms. Diane Tefft, Chief, Bureau of Radiological Health, Mr. Jack Stanton, Assistant Director, Office of Environmental Health and Hazard Assessment, and Mr. Dennis O'Dowd, Radioactive Materials Section Chief. The NRC was represented by Ms. Teresa Hall Darden, Acting Regional State Agreements Officer, Region I.

A summary meeting to present the results of the follow-up review was held on July 1, 1993 with the previously identified individuals.

CONCLUSIONS

The State's program for controlling agreement materials is adequate to protect the public health and safety. However, the compatibility finding continues to be withheld pending the adoption of regulations that are deemed by the NRC to be matters of compatibility: (1) Decommissioning Rule, (2) Emergency Planning Rule, (3) Standards for Protection Against Radiation, and (4) Safety Requirements for Radiographic Equipment. The decommissioning rule was due by July 1991; the emergency planning rule was due by April 7 1993; the standards for protection rule was due by January 1, 1994; and the radiographic rule was due by January 10, 1994. The State plans to address the emergency planning by license condition until this rule is finalized in 1994.

Also discussed were the notification requirements and written procedures for misadministration events and the specific questions associated with the Notification Survey. The State has a written procedure to address notification of medical misadministrations. This procedure is updated as necessary. The most recent update to the procedure (June 30, 1993) included verbal questioning of licensee staff and management during inspections to assure their understanding of the notification requirements for misadministrations.

ENCLOSURE 2

STATUS OF PREVIOUS NRC COMMENTS AND RECOMMENDATIONS

The follow-up review consisted of examinations and evaluation of the status of the State's actions as a result of NRC comments from the last routine program review conducted in June 1992. These comments were addressed in a letter dated August 27, 1992 to Dr. Patrick Meehan, Director, Division of Public Health Services. The comments which formed the basis for withholding a finding of adequacy and compatibility were discussed with the Program Director during the follow-up review.

Follow-up Assessments to the August 1992 Review Comments and Recommendations

Although this review focused on evaluating changes made in response to our previous findings, related program indicators were also reviewed. Specific comments and recommendations for the radioactive materials program are as follows:

1. Status and Compatibility of Regulations is a Category I indicator.

Comments from 1992 Review

The review of the State's radiation control regulations disclosed that the State's regulations are compatible with the NRC regulations up to 10 CFR Parts 30, 40, and 70 amendments on decommissioning that became effective on July 27, 1988. This decommissioning amendment is a matter of compatibility. In a letter dated September 14, 1990, we informed the States that the Commission planned to include a formal comment in its review letters to any State that had not adopted the Decommission Rule by the three-year target date, i.e., July 12, 1991. At the time of the review of the New Hampshire program, the State had not initiated rulemaking on this rule.

Other regulations have been promulgated by NRC that are also matters of compatibility. These regulations are identified below with the Federal Register (FR) notice and the date that the State needs to adopt the regulation.

- "Emergency Planning Rule," 10 CFR Parts 30, 40, and 70 amendments (54 FR 14051) are needed by April 7, 1993.
- "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment (55 FR 843) is needed by January 10, 1994.
- "Standards for Protection Against Radiation," 10 CFR Part 20 amendment (56 FR 61352) is needed by January 1, 1994.

Recommendation from 1992 Review

We recommend that the Bureau of Radiological Health initiate action to develop a rulemaking on decommissioning as soon as possible. In addition, the State should begin to address the other regulations that are needed to maintain compatibility.

Current Status

At the time of the review of the State's radiation control program two regulations were needed for compatibility with NRC's regulatory program. These rules are: "Emergency Planning Rule," 10 CFR Parts 30, 40 and 70 amendments (54 FR 14051) needed by April 7, 1993 and the "Decommissioning Rule," 10 CFR Parts 30, 40, and 70 amendments needed

by July 27, 1991. Since the review, two additional regulations have become overdue: (1) "Standards for Protection Against Radiation," 10 CFR Part 20 amendment (56 FR 61352) was needed by January 1, 1994; and "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment (55 FR 843) which was needed by January 10, 1994.

The State is revising its regulations and plans to finalize its revisions in 1994. This revision will include the overdue regulations and "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment.

The State plans to address the emergency planning rule by license condition until this rule is finalized in 1994.

In addition, as a matter separate from this review, we would like to bring to the State's attention other regulations needed for compatibility. These rules are:

- "Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (56 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.
- "Licenses and Radiation Safety Requirements for Irradiators," 10 CFR Part 36 (58 FR 7715) which is needed by July 1, 1996.
- "Licensing Requirements for Land Disposal of Radioactive Wastes," 10 CFR Part 61 (58 FR 33886) which is needed by July 22, 1996.
- "Decommissioning Recordkeeping and License Termination: Documentation Additions," 10 CFR Parts 30, 40, 70, and 72 (58 FR 39628) which is needed by October 25, 1996.

Follow-up Recommendation

We recommend that the Bureau of Radiological Health expedite the rulemaking process for the overdue regulations and continue in its efforts to adopt the other regulations needed for compatibility.

2. Enforcement procedures is a Category I indicator. This was a repeat comment from our 1989 review.

Comment from 1992 Review

While the State has passed the legislation necessary to authorize civil penalties, rulemaking is needed to implement this authority. According to the State's plan made in response to the previous follow-up review, the enforcement procedures were to be completed by August 31, 1990. The State did not meet this target although draft procedures, based on 10 CFR Part 2 and other Agreement State enforcement procedures, have been prepared. The legislation providing for the civil penalty authority requires the issuance of regulations for the State to implement this civil penalty authority. The issuance of escalated enforcement procedures is also being delayed due to an effort on the part of the Department of Health and Human Services to update the Department's enforcement policies.

Recommendation from 1992 Review

As we have stated in the past, the State should amend its regulations to include the rules needed to implement its civil penalty authority and the Bureau should finalize its escalated enforcement procedures so that civil penalties and other escalated enforcement sanctions are applied on a consistent and equitable basis.

Current Status

The Department's enforcement rule, policies, and procedures are to be finalized in 1994.

Follow-up Recommendation

We request that the State notify us when the enforcement rule, policies and procedures are adopted. In addition, the State should also notify us of any delays in the adoption process.

3. Budget is a Category II indicator.

Comment from 1992 Review

The NRC recommends licensing, inspection and other fees as an appropriate mechanism for raising revenues for State regulatory programs. At the current time, the New Hampshire annual fees are among the lowest in the Region. In addition, the procedures for assessing and billing for annual fees, particularly the requirement for an annual license renewal, is not an inconsequential administrative burden.

Recommendation from 1992 Review

We support the Division's current efforts to increase its fees and recommend that the fee system be revised in such a manner as to reduce the administrative burden as much as possible.

Current Status

The New Hampshire fees rule, which includes fee increases, received legal department approval and is in the final stages of adoption. The new fees legislation enables the department budget to cover the cost of new staff.

Follow-up Recommendation

We request that the State notify us when the fees rule is adopted.

4. Administrative Procedures is a Category II indicator.

Comment from 1992 Review

The NRC periodically distributes Information Notices to its licensees which pertain to technical and regulatory issues of interest to a broad spectrum of licensees. Copies of these Information Notices are sent to all Agreement State regulatory agencies so that the State may inform their licensees of this important information. Over the past few years, it appears that New Hampshire has not been forwarding these notices to its licensees.

Recommendation from 1992 Review

We recommend that the Bureau of Radiological Health develop a procedure for reviewing the Information Notices forwarded to the States by NRC and distribute them to the appropriate licensees in the State.

Current Status

New Hampshire has developed a written procedure for distribution of these Information Notices to its licensees. The increase in staff enables the Radiation Control Section Chief to provide administrative oversight which includes distribution of these notices.

Follow-up Recommendation

We consider this item closed.

5. Licensing Procedures is a Category II Indicator

Comment from 1992 Review

During the review of licensing actions, it was noted that in two cases, licensees submitted inappropriate procedures for instrument calibration, i.e. electronic pulse calibration.

Recommendation

As part of its license review procedures, the Bureau should assure that appropriate instrument calibration procedures, i.e. using a radiation field, are submitted by applicants.

Current Status

The State no longer accepts electronic pulse calibrations.

Follow-up Recommendation

We recommend that the State amend its licensing procedures to indicate that electronic pulse calibrations are not acceptable for instrument calibration.

6. Status of Inspection Program is a Category I indicator.

- A. Comment from 1992 Review

There are currently 19 licenses overdue for inspection.

Recommendation from 1992 Review

We recommend that the State's inspection program be assessed on a continuing basis to assure that it is not allowed to deteriorate.

Current Status

There are no overdue inspections.

Follow-up Recommendation

We consider this item closed.

B. Comment from 1992 Review

The NRC believes that the conduct of field inspections of radiographers is an important aspect of the inspection of such licensees. Although only one New Hampshire licensee is performing field work, no field evaluations have been performed in some time. In addition, a significant amount of the radiography performed in the State is performed by out-of-State firms under the reciprocity provisions of the regulations.

Recommendation from 1992 Review

We recommend that the Bureau attempt to perform more field site inspections of radiographers, both of in-State and out-of-State licensees.

Current Status

The State has made a good effort to perform some field evaluations of radiography work done by State licensees as well as by out-of-State firms under the reciprocity provisions of the regulations.

Follow-up Recommendation

We recommend that the State continue in its efforts to inspect radiography licensees and those working under reciprocity.

7. Inspectors Performance and Capability is a Category I indicator.

Comment from 1992 Review

NRC guidelines state that compliance supervisors should conduct annual field evaluations of each inspector to assess performance and assure application of appropriate and consistent policies and guides. The Bureau's radioactive materials supervisor has not performed an inspector field evaluation since May 1991.

Recommendation from 1992 Review

We recommend that the Bureau reinstitute a program of annual field evaluations.

Current Status

The Bureau is performing supervisory field evaluations of the inspection staff. All of the new health physicists have been accompanied on several occasions as of the date of this letter.

Follow-up Recommendation

We consider this item closed.