



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

March 3, 2011

Matthew McKinley, Administrator
Radiation Health Program
Cabinet for Health & Family Services
275 East Main Street, HS1C-A
Frankfort, KY 40621-0001

Dear Mr. McKinley:

A periodic meeting was held with you on February 10, 2011. The purpose of the meeting was to review and discuss the status of the Commonwealth of Kentucky's Cabinet for Health and Family Services' Radiation Health Program. The NRC was represented by Daniel Collins, Leira Cuadrado, and me. Topics and issues of importance discussed at the meeting included a detailed discussion of recommendations from the 2008 IMPEP review.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (610) 337-5214, or email to Monica.Orendi@nrc.gov to discuss your comments.

Sincerely,

/RA/

Monica Orendi
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES'
RADIATION HEALTH PROGRAM

DATE OF MEETING: February 10, 2011

NRC Attendees	Kentucky Department For Public Health
Monica Orendi, RSAO, Region I	Matthew McKinley, Administrator, Radiation Health Program
Daniel Collins, Deputy Director, DNMS, RI	
Leira Cuadrado, Health Physicist, FSME	

DISCUSSION:

During the 2008 Integrated Materials Performance Evaluation Program (IMPEP) review of the Kentucky Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for five performance indicators and satisfactory, but needs improvement, for three performance indicators. Six recommendations were made by the IMPEP review team. On October 28, 2008, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Program. The MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC program. The MRB requested that Kentucky continue to remain in monitoring status, and that calls between the Program and NRC staffs continue to be conducted quarterly, and that a Periodic Meeting take place approximately one year from the 2008 IMPEP review. On September 15, 2009, a periodic meeting was held to discuss the status of the Program and the recommendations made during the 2008 IMPEP. On January 7, 2010, the MRB met to discuss the results of the periodic meeting. The MRB concluded that the next IMPEP review of the Program should take place as currently scheduled in Fiscal year 2012.

The following is a status summary of the six recommendations that were identified in the 2008 Kentucky final IMPEP report:

1. The review team recommended that the Commonwealth revise its inspection procedures to require documentation of the closure of any previous violation, verification of corrective actions and evaluation of preventive measures implemented by the licensee both in the inspection documentation and during the exit meeting with the licensee.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

This recommendation remains open and should be evaluated at the next IMPEP review.

2. The review team recommended that the Commonwealth discuss previous inspection findings, corrective actions, and any potential violations with the licensee during inspections.

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Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

This recommendation remains open and should be evaluated at the next IMPEP review.

3. The review team recommended that the Commonwealth use its own calibrated radiological survey equipment to perform independent confirmatory surveys during inspections.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures and the need to use Program equipment when conducting radiation surveys/measurements at licensee facilities

This recommendation remains open and should be evaluated at the next IMPEP review.

4. The review team recommended that the Commonwealth develop and implement a reliable mechanism to identify when a license is in need of a comprehensive renewal, identify these licenses, and develop and implement a plan to perform these renewals.

Status: The Program has put in place a revised data base that tracks licensing actions and identifies when a license is in need of a comprehensive renewal.

This recommendation remains open and should be evaluated at the next IMPEP review.

5. The review team recommended that the Commonwealth integrate the pre-licensing requirements of FSME 07-026 into their licensing program and reevaluate new licenses issued since September 2007 for implementation of these requirements.

Status: The Program has put in place a specific procedure to implement the requirements of FSME 07-026; Program staff has received training on this procedure. These requirements have been implemented for new licenses issued since September 2007.

This recommendation remains open and should be evaluated at the next IMPEP review.

6. The review team recommended that the Commonwealth develop and implement a mechanism to verify the implementation of the approved quality assurance and quality control program of the SSD manufacturer's program.

Status: The Program has taken action on this recommendation. Changes were made to the manufacturing and distribution inspection forms so that during inspections of SS&D manufacturers, the staff verifies the implementation of the manufacturers' approved quality assurance and quality control programs.

This recommendation remains open and should be evaluated at the next IMPEP review.

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OTHER TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

An enthusiastic staff with diverse backgrounds, accompanied by a balanced work load and a good relationship with management is the strength of the Program. Staff is supportive of each other and work together to achieve maximum success for the Program. Program management has a clear vision for the Program and is very supportive of staff training and work supporting national level organizations.

Program Weaknesses

The Program noted one weakness which is that the staff can be pulled in many directions related to non-radioactive materials work. Program management is working to ensure this does not conflict with the Commonwealth's Agreement State responsibilities.

Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program welcomed the NRC funding of training. The Program suggested that NRC should look at providing more complimentary assistance to Agreement States if it is requested. The Program stated that sometimes unexpected issues arrive where man power and technical expertise are needed to help with a short term issue.

Agreement State Program Staffing and Training

The Program staff consists of eight individuals, one Program supervisor and one Program Administrator. There is one staff vacancy which is the Program supervisor position. Mr. McKinley anticipated having the supervisory position filled in the next few days following this Periodic meeting. Since the previous Periodic meeting there was one retirement which was the Program administrator. That position was filled by Mr. McKinley which created the vacancy at the Program supervisor level.

Support for staff training exists in the Program. Kentucky welcomed the NRC's revised policy on funding training for Agreement States. Program staff has attended multiple NRC training courses. The Program Supervisor noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization

The Program is administered by the Radioactive Materials Section of the Radiation Health Branch (Branch). The Branch is part of the Radiation Health Program. In addition to the Program, the Branch is responsible for radiation producing machines, radiological emergency response and environmental radiation/radon.

Program Budget/Funding

Mr. McKinley stated that the Program is adequately funded for now. Funding sources for the

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Program include fees, grants and appropriations. The Program is being subject to six furlough days throughout the current fiscal year. Mr. McKinley stated that he anticipates those furlough days going away at the start of the next fiscal year (July).

Inspection Program

The Program's inspection frequencies are at least as frequent as NRC's. Fourteen Priority 1 and Priority 2 inspections were overdue with respect to NRC inspection frequencies. About 89 other inspections were past due. Mr. McKinley stated that the inspection backlog was manageable and not a burden on the Program.

The Program maintains a database to monitor inspection scheduling and tracking and is working on a new data base. Management is aware of the importance of inspection program schedules.

The Program had no licensing actions that were overdue. Mr. McKinley stated that the number of licenses has remained constant over the last several years at about 420 licenses. The Program averages about 40 to 60 open licensing actions on average at any one time.

Regulations and Legislative Changes

There have not been any legislative changes or proposals that have affected the Program. The Program's regulations are not subject to sunset laws.

The following regulations are currently overdue:

- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendment (60 FR 15649 and 60 FR 25983), that was due for Agreement State implementation on March 1, 1998. (RATS ID 1995-3)
- "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendment (60 FR 38235), that was due for Agreement State implementation on November 24, 1998. (RATS ID 1995-6)
- "Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 amendment (60 FR 48623), that was due for Agreement State implementation on October 20, 1998. (RATS ID 1995-7)
- "Minor Corrections, Clarifying Changes and a Minor Policy Change," 10 CFR Parts 20, 35, and 36 amendment (63 FR 39777 and 63 FR 45393), that was due for Agreement State implementation on October 26, 2001. (RATS ID 1998-5)
- "Transfer for Disposal and Manifests: Minor Technical Conforming Amendment," 10 CFR Part 20 amendment (63 FR 50127), that was due for Agreement State implementation on November 20, 2001. (RATS ID 1998-6)
- "Respiratory Protection and Controls to Restrict Internal Exposure," 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524), that was due for Agreement State implementation on February 2, 2003. (RATS ID 1999-3)

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- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337), that was due for Agreement State implementation on May 17, 2003. (RATS ID 2000-1)
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendment (65 FR 63749), that was due for Agreement State implementation on January 8, 2004. (RATS ID 2000-2)
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendment (65 FR 79162), that was due for Agreement State implementation on February 16, 2004. (RATS ID 2001-1)
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that was due for Agreement State implementation on April 5, 2005. (RATS ID 2002-1)
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendment (67 FR 20250), that was due for Agreement State implementation on October 24, 2005. (RATS ID 2002-2)
- “Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327), that was due for Agreement State implementation on December 3, 2006. (RATS ID 2003-1)
- “Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments,” 10 CFR Part 71 amendment (69 FR 3697), that was due for Agreement State implementation on October 1, 2007. (RATS ID 2004-1)
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 amendment (70 FR 2001), that was due for Agreement State implementation on October 1, 2007. (RATS ID 2005-1)
- “Medical Use of Byproduct Materials - Recognition of Specialty Boards - Part 35,” 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008. (RATS ID 2005-2)
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendment (71 FR 15005), that was due for Agreement State implementation on March 27, 2009. (RATS ID 2006-1)
- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 amendment (72 FR 45147, 54207), that was due for implementation on October 29, 2010. (RATS ID 2007-1)
- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendment (72 FR 58473), that was due for implementation on December 17, 2010. (RATS ID 2007-2)

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- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendment (72 FR 55864), that was due for implementation on November 30, 2010. (RATS ID 2007-3)

Six of the above overdue regulations have been filed with the legislative research commission with a hearing scheduled for March 2011. Another set of six overdue regulations will be filed with the same commission in March 2011. The Program expects all 12 regulations to be final and submitted to NRC for final review in April 2011. After that the Program intends to work on adopting the other seven overdue regulations and have them adopted by July 2012.

Event Reporting

The Program communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a correct manner. Since the last Periodic Meeting in September 2009, eight events were reported to the NRC. It was noted during this Periodic meeting that a few of the events had not been closed out by the State. The Program agreed to follow-up on this issue and close out events as appropriate.

Response to Incidents and Allegations

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program is aware of the need to maintain an effective response to incidents and allegations.

Sealed Source and Device Program

The State has had no actions with regards to their SS&D program since the last periodic meeting.

Current State Initiatives

The Program’s priority initiative is implementing the currently overdue NRC regulations.

Commonwealth’s Mechanisms to Evaluate Performance

Mr. McKinley stated that he plans on assigning parts of the IMPEP questionnaire to his staff periodically between reviews to assess how the Program is performing.

Action Items Resulting From the Meeting

NRC Region 1:

- Will provide the Program with RIS-05-031 (completed 2/17/11 via email to Mr. McKinley).
- Will send the Program with Region 1 DNMS organization chart (completed 2/17/11 via email to Mr. McKinley).
- Will send NRC comment letter on Kentucky regulations for RATS ID 1997-5 (completed

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2/17/11 via email to Mr. McKinley).

NRC/FSME:

-Will keep in touch with Kentucky with regards to integration of ISMP.

CONCLUSIONS:

Kentucky's program continues to improve. The Program is adequately staffed. Kentucky has been responsive to the recommendations that were made during the 2008 IMPEP review. All of the recommendations made during the IMPEP have been addressed and should be evaluated at the next IMPEP review. Although Kentucky cannot predict a date for implementation of the overdue regulations, they are hoping for an April 2011 implementation date.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2012.

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