



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

June 27, 2013

Sheila Pinette, D.O., Director
Maine Center for Disease Control
and Prevention
286 Water Street
11 State House Station
Augusta, ME 04333-0011

Dear Dr. Pinette:

A periodic meeting with you and your staff was held on June 4, 2013. The purpose of this meeting was to review and discuss the status of the Maine Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by Daniel Collins, Duncan White, and me.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions. A Management Review Board (MRB) meeting to discuss the outcome of the periodic meeting has been scheduled for July 9, 2013 at 2:00pm. Call in information for the MRB will be provided in a separate transmission.

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 via e-mail at Monica.Orendi@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Monica Lynn Orendi
Regional State Agreements Officer
Division of Nuclear Materials Safety
U.S. NRC Region I

Enclosure:
Periodic Meeting Summary for Maine

cc w/encl.: Jay Hyland, Manager
Maine Radiation Control Program

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
 MAINE DIVISION OF ENVIRONMENTAL HEALTH
 RADIATION CONTROL PROGRAM

DATE OF MEETING: June 4, 2013

Nuclear Regulatory Commission (NRC) Attendees	Maine Division of Environmental Health Attendees
Monica Orendi, RSAO, Region I	Jay Hyland, Manager
Daniel Collins, Deputy Division Director, Region I	Jean Geslin, Radioactive Materials Inspector
Duncan White, Branch Chief, Office of Federal and State Materials and Environmental Management Programs (FSME)	Tom Hillman, Radioactive Materials Inspector
	Sheila Pinette, D.O., Director Center for Disease Control and Prevention (at exit only)

DISCUSSION:

During the 2011 Integrated Materials Performance Evaluation Program (IMPEP) review of the Maine Agreement State Program (the Program), the review team found the State's performance satisfactory for all performance indicators reviewed. The review team made three recommendations. On July 21, 2011, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Maine Agreement State Program. The MRB determined that Maine's performance for the indicator Technical Staffing and Training was satisfactory but needs improvement and all other indicators were found to be satisfactory. The MRB found the Program adequate to protect public health and safety and compatible with NRC's program. Based on the results of the IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in four years and that a periodic meeting be held in approximately two years.

TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

The Program noted several strengths. The program manager stated that the program staff is very dedicated and works well together. There is also good managerial support at the program level and above. The Program has good administrative support. The Program has NRC's license tracking system (LTS) installed and has plans to have a training webinar provided by FSME.

Program Weaknesses

The program manager stated that the Program's weakness is that their data is located in several different places. Data going back to the beginning of the Program is located in hard copy files. The Program also has digital copies going back approximately two years. There are also a number of databases for tracking licenses by type, inspection frequency, and user. The program manager stated that much of the data is tracked by hard copy in order to close out a recommendation being evaluated during the 2011 IMPEP and because of data entry errors. The program manager is hopeful that once LTS is properly implemented it will help to decrease the amount of time and effort that is now being expended on data entry and review.

Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program also expressed its appreciation for the NRC training classes and stated that the training instructors are very knowledgeable. Last, the program manager discussed Maine's appreciation for the IMPEP process. The manager stated that IMPEP is a model program and the State welcomes both the periodic meetings and the IMPEP reviews. The Program feels that the IMPEP process also helps raise managerial awareness of the Program.

Agreement State Program Staffing and Training

The Program currently consists of two filled technical staff positions, one vacant technical staff position, and a program manager. With the vacancy the Program comprises approximately 2.4 full time equivalents (FTE); however, when the vacancy is filled the Program will be composed of 3.2 FTE. The vacancy was created when the only fully qualified staff member retired on short notice in September 2012.

The program manager is a fully qualified license reviewer and inspector. The program manager performed one inspection with one of the new staff in January 2013. The program manager also reviews licensing documents produced by the staff. The two technical staff are still going through the qualification process and are only qualified for lower priority inspections such as portable and fixed gauges and small medical facilities.

Support for staff training exists in the Program. Maine has been utilizing NRC's training courses to support the qualifications of the technical staff. The 2011 IMPEP had one recommendation in this indicator. The recommendation and status are below.

Recommendation 1: The review team recommends that the State develop and implement a strategy to address current and future staffing vacancies in order to maintain the effectiveness and efficiency of the Program.

Status: The program manager stated that in order to address the recommendation, the Program's original plan was to move the staff member over from the State's low level waste program to the radioactive materials program when the individual returned from military duty in order to try and address this recommendation. This staff member was moved to the program in September 2011. The program manager stated that by doing this, the hope was to increase the Program's FTE from 2.4 to 3.2 when the vacant staff position left unfilled by the hiring freeze was finally able to be filled. The Program was able to fill that vacant position in June 2012 and increase the Program's FTE to 3.2. However, the unexpected departure of a staff member in September 2012 has caused the Program to return to 2.4 FTE. The vacant position created by

the September 2012 retirement is unable to be filled at this time due to a hiring freeze. Thus the increase in FTE has not yet been realized.

Organization

The Maine Agreement State Program is located in the Radiation Control Program which is located in the Division of Environmental Health in the Center for Disease Control and Prevention under the Department for Health and Human Services.

Program Budget/Funding

The Program is 100 percent fee funded. Maine recently increased its fees and now charges 50 percent of NRC fees from 2009. The funds are placed into a dedicated fund for the Radioactive Materials Program. Although the money is placed into a dedicated fund money can be taken out of the fund by one of three ways: 1) stacap, which is a 3.45% tax that is assessed monthly on the account and goes into the general fund, 2) dicap, which allows the Maine Department of Health and Human Services to take money out of the account every month based on FTE, it amounts to approximately \$8,100.00 per FTE per year, and 3) a change in legislation, which is rare. The program manager stated that currently money from the general fund is being used to cover the costs of the Program in order to help with a deficit that occurred before the fee increase was enacted.

Licensing and Inspection Programs

The Program currently has approximately 125 specific licenses. The Program has completed 111 licensing actions since the May 2011 IMPEP. The technical staff has signature authority for all types of licensing actions. All completed licensing actions undergo a peer or managerial review before being signed and issued.

All of the Program's inspection frequencies are performed at the same frequency as the NRC's. At the time of the periodic meeting, the Program reported that of the 125 licensees, it has 6 licensees implementing the Increased Controls and Fingerprinting requirements. The program manager also stated that the Program was composed largely of Priority 5 licensees and that only 19 percent fell into the Priority 1, 2, and 3 categories. The Program also reported that it had 14 overdue Priority 1, 2, and 3 inspections by more than 25 percent of the inspection frequency since the last IMPEP review. The Program has performed five priority 1, 2, and 3 inspections since the last IMPEP review. The program manager stated that it was decided that the Program would take a hit in the area of overdue inspections in order to allow the two technical staff to become fully qualified inspectors. The program manager stated that the two technical staff should be fully qualified by August and they will then work on taking care of the backlog of overdue inspections. Once the backlog is taken care of the Program will focus on performing inspections in accordance with their assigned inspection priority.

The Program believes that it completed one initial inspection since the last IMPEP; however, it was completed by the staff member who retired in September 2012 and documentation of the inspection cannot be found. The program manager stated that they may need to go out and repeat this inspection. It was noted that this was a Priority 1 licensee and the initial inspection was originally due by May 22, 2012. If the original initial inspection was completed the Program would need to complete an inspection of this licensee by no later than August 22, 2013, in order to keep from going overdue by more than 25 percent of the Priority 1 inspection frequency. Therefore an inspection needs to be completed in the near future whether paperwork from the

initial inspection is found or not. The Program also has two additional initial inspections, that are not currently overdue, that need to be completed.

The Program received 58 reciprocity notifications from 24 reciprocity licensees since the last IMPEP. The Program has completed one reciprocity inspection, which the Program believes was either a priority 3 or a priority 5 licensee, since the last IMPEP review.

The 2011 IMPEP review generated one recommendation in this indicator. The recommendation and its status are below.

Recommendation 2: The review team recommends that annual supervisor accompaniments be performed for each radioactive materials staff member to ensure quality and consistency within the program.

Status: The program manager accompanied the one fully qualified inspector in calendar year 2011 but did not accompany this individual before they retired in September 2012. The program manager has not performed any annual supervisory accompaniments to date in calendar year 2013. The program manager stated during the periodic meeting that the two technical staff going through their qualifications have been signed off to perform certain lower priority inspections based on completion of training, prior work experience, observations from accompaniments performed by the senior inspector (before his retirement), and the program manager's review of their inspection work products. The program manager has not included field observations of the inspectors in his decision to qualify his staff to perform lower priority inspections.

Regulations and Legislative Changes

The Program is designated as the State's radiation control agency. No legislation affecting the Program was passed since the last IMPEP review and the Program is not subject to sunset requirements.

The Maine Regulations for Control of Radiation, found in Maine Administrative Rules 10-144A CMR 220, apply to all ionizing radiation. Maine requires a license for possession and use of all radioactive material, including naturally occurring materials, and accelerator produced radionuclides. Maine also requires registration of all equipment designed to produce X-rays or other ionizing radiation.

At the time of the periodic meeting, there were no NRC amendments overdue for adoption. However, it was noted by the May 2011 IMPEP review team that the final published rules submitted for NRC review in March 2010 generated 22 NRC comments. The review team made a recommendation based on this finding. The recommendation and its status are listed below.

Recommendation 3: The review team recommends that the State expedite action to address the comments identified in NRC letters dated August 31, 2006, and June 18, 2010, to promulgate and complete changes to the State regulations.

Status: The Program manager stated that staff is working on addressing the comments made by the NRC in its letters dated August 31, 2006 and June 18, 2010. The Program hopes to have the changes incorporated by the end of calendar year 2013.

Event Reporting

The Program has had no reportable events since the last IMPEP review. The Program has had five scrap metal alarms and 15 solid waste alarms, which were all non-reportable events, since the May 2011 IMPEP.

Response to Incidents and Allegations

The Program is aware of the need to maintain an effective response to incidents and allegations. When notified of an incident, the radioactive materials staff in the Program will be assigned to investigate and document the incident and determine if the event requires a call to the NRC Headquarters Operations Center. The inspector is responsible for recording the event in the Nuclear Materials Events Database (NMED) local incident database and transferring updates to the NRC's contractor responsible for maintaining NMED. Since the last IMPEP review, the Program has received no allegations.

During the periodic meeting, the Program's follow-up to a 2011 incident involving an NRC licensee, working under reciprocity in Maine, was discussed. The issue was identified when the material reached its destination at the NRC service provider licensee's offices in Idaho. The Maine Program was notified by the NRC of the incident and the Program conducted appropriate immediate follow-up at the hospital where the service provider licensee performed its work. That follow-up ensured that the hospital facility was not contaminated and that there was no adverse effect on public health and safety. The program manager stated that the Program's consideration of potential enforcement actions against the licensee is still on going.

Sealed Source and Device Evaluation (SS&D)

At the time of the May 2011 IMPEP, no SS&D certificates had been issued by the Program and there were no manufacturers of SS&Ds in the State. Accordingly, the IMPEP team did not review this indicator. During the periodic meeting the program manger stated that a manufacturer and distributor (M&D) had located itself in Maine and had submitted an SS&D sheet for approval to the Program on May 31, 2013. The program manager stated that the New England States have signed the New England Radiological Health Compact so the Program is able to utilize expertise in another State to help perform the SS&D review and approval. The program manager stated that Maine has decided to initially receive help from Massachusetts. The Program plans to use Massachusetts to perform the SS&D reviews until such time as the Program can get one or both staff qualified. The Program is planning to send at least one staff member to the SS&D course being held in the spring of 2014 and also has plans to send that staff person to Massachusetts to obtain additional training. Currently the M&D licensee who submitted the SS&D sheet only has plans to submit that one sheet. However the M&D licensee did express to the Program that they hope to obtain other contracts and may need to submit additional SS&D's in the future.

State's Mechanisms to Evaluate Performance

A Performance Management System is being rolled out for the entire Maine Center for Disease Control and Prevention. The Program will use information from the IMPEP questionnaire as performance measures that will be input into this new system on a regular basis. The system is in the process of being created and the Program expects it will be rolled out by the end of calendar year 2013. The Program has no other currently utilized internal mechanisms to routinely evaluate performance.

CONCLUSIONS:

The Maine Agreement State Program has shown declining performance since the May 2011 IMPEP review. This decline in performance is largely due to the retirement of the only fully qualified technical staff member in September 2012. Since the last IMPEP two new technical staff members have joined the Program and there is currently one vacancy that cannot be filled due to a hiring freeze. The Program has 14 inspections of priority 1, 2, and 3 overdue by more than 25 percent of their inspection due date. In addition the Program has performed only one reciprocity inspection of the 24 reciprocity licensees. Supervisory accompaniments of the current staff have not been completed by the program manager and staff is being considered qualified without having had a supervisory field observation of their inspection skills.

Prior to concluding the periodic meeting, the NRC representatives met with Dr. Sheila Pinette, Director of the Maine CDC. During that discussion, which was attended by the Program manager and staff, concerns regarding the staff qualifications and status of inspections were discussed. Dr. Pinette expressed her full support for ensuring that these concerns are addressed and the program regains compliance with NRC program requirements.

Based on the above, NRC staff recommends that the Maine Agreement State Program be placed on Monitoring. Additionally the staff recommends that the Program create a program improvement plan, that quarterly status calls between the NRC and the Program be conducted, that a periodic meeting be held in May 2014, and that the next IMPEP review of the Maine Agreement State Program be conducted as scheduled in May 2015.