



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005

March 27, 2008

Terry O'Clair, Director  
Division of Air Quality  
North Dakota Department  
of Health  
918 E. Divide Avenue, 2<sup>nd</sup> Floor  
Bismarck, North Dakota 58501-1947

Dear Mr. O'Clair:

A periodic meeting with your State was held on March 18, 2008. The purpose of this meeting was to review and discuss the status of the North Dakota Agreement State Program. The NRC was represented by Mr. Leonard Wert from NRC's Region IV office, Mr. William Rautzen from NRC's Office of Federal and State Materials and Environmental Management Programs, and me. Topics and issues of importance discussed at the meeting included a detailed discussion of your ongoing recovery from the loss of key senior health physics personnel, and the assistance provided to your program by members of the Minnesota Radiation Control Program.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

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 (817) 860-8143 or e-mail [RRE@nrc.gov](mailto:RRE@nrc.gov) to discuss your concerns.

Sincerely,

*/RA/*

Randy Erickson

Enclosure:  
Periodic Meeting Summary for North Dakota

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NORTH DAKOTA

DATE OF MEETING: MARCH 18, 2008

<b>NRC Attendees</b>	<b>North Dakota Attendees</b>
Randy Erickson, RSAO	Terry O'Clair, Director
Leonard Wert, Director	Daniel Harman, Program Manager
William Rautzen, FSME	Chris Schmaltz, Environmental Scientist
	Louise Roehrich, Environmental Scientist

**DISCUSSION:**

The North Dakota Agreement State program (the Program) is administered by the Division of Air Quality (the Division) within the Environmental Health Section of the North Dakota Department of Health. The Program, which administers the licensing and inspection portion of the Agreement State Program, is under the supervision of the Manager of the Radiation and Indoor Air programs. The Program is a part of the Division, which is one of several environmental programs located within the North Dakota Department of Health. At the time of the review, the North Dakota program regulated approximately 65 specific licenses.

The previous IMPEP review was conducted the week of April 17-19, 2007. At the conclusion of the review, the team recommended that North Dakota's performance be found satisfactory but needs improvement, for the indicator, Status of the Material's Inspection Program, and satisfactory for all remaining performance indicators reviewed. The review team made no recommendations regarding the performance of the North Dakota Agreement State Program. Therefore the review team recommended, and on June 25, 2007, the Management Review Board (MRB) agreed, that the North Dakota Agreement State Program was adequate to protect public health and safety and compatible with NRC's program. Additionally, the review team recommended and the MRB agreed that a periodic meeting be held with the Program in one year.

Other topics covered at the meeting included.

Program Strengths: Following the 2007 IMPEP review, the Program lost the senior Health Physicist and the Program Manager in rapid succession. The loss of these staff members presented a hardship for the Program because the remaining health physicist had limited licensing and inspection experience. The Program was able to hire a new Program Manager and Health Physicist; however, having no radioactive materials regulatory experience, these individuals were unable to immediately contribute significantly to the program. While the Program worked to hire staff, the remaining health physicist performed basic licensing and inspection activities and the Program was able to maintain health and safety. The lack of a qualified individual capable of training the staff in licensing and inspection activities was also a compounding problem for the Program.

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Shortly after the Program Manager and the senior Health Physicist left the program, the Minnesota Radiation Control Program (Minnesota) offered assistance to the Program to both train staff and perform inspections of North Dakota licensees. The State accepted Minnesota's offer and worked with them on an expedited training schedule. The plan was to provide interim qualification so the Program's inspectors would be able to independently perform inspections. Minnesota traveled to North Dakota to perform inspections and train staff in program areas licensed by the Program. North Dakota also traveled to Minnesota to accompany their inspectors as they performed inspections. As North Dakota inspectors became proficient with various types of licensed activities, Minnesota signed the inspectors off as being competent to independently perform that type of inspection. This process is ongoing and Minnesota continues to assist the North Dakota program.

When faced with the adversity of unexpected staff losses, North Dakota worked cooperatively with Minnesota to train staff and to keep from falling significantly behind in the inspection program. The Program was also able to keep up with licensing actions.

Program Weaknesses: The Program cited their lack of experience, the need for training, and a steep learning curve as weaknesses they will face in the near future.

Staffing and training:

The Program has a total of 3 positions when fully staffed. This includes the Program Manager and two Health Physicists. Since the Program Manager and senior Health Physicist positions were filled, the program has remained stable. The Program does not anticipate any upcoming staff departures.

Program reorganizations:

The Program has not experienced any program reorganizations. None are expected.

Changes in Program budget/funding.

The Program has not experienced any budget or funding changes since the 2007 review.

Materials Inspection Program:

During the 2007 IMPEP review, it was noted that the inspection program generally performed most inspections between the due date and the overdue date. The review team cautioned the Program Manager and the Division Director that if the Program lost staff while operating in this manner, it could result in the Program failing to meet their inspection timeliness goals. Shortly after the review, both the Program Manager and senior Health Physicist left the program. The Division Director hired replacement staff, and with the help provided by the Minnesota Program, the Program was able to keep from falling seriously behind. The Program reported that since the 2007 IMPEP review,

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only three inspections had been performed overdue, with one being a licensee who worked out of state and infrequently returned to North Dakota. At the time of the Periodic Meeting, no inspections were overdue. The current Program Manager indicated that the Program is currently working to eliminate the practice of routinely performing inspections between the due date and the overdue date.

The Program initially identified eight licensees who were required to implement Increased Controls. The Program reported that all Priority 1 licensees had been inspected within the first year and that the remaining inspections have either been performed or will be completed by the end of 2008.

The Program continues to complete as many reciprocity inspections as possible. Competing priorities including performing timely routine inspections, attending out of state training courses, and working on licensing actions frequently cause the Program to decide which reciprocity licensees absolutely need to be inspected. Additionally, reciprocity licensees frequently work in the more populated areas of the State. These are generally located near the east and western borders of the State, far from the location of their office. The Program is committed to performing 20 percent of candidate reciprocity licensees.

Regulations and Legislative changes:

There have been no legislative changes since the 2007 review that have affected the Program.

The Program has decided to adopt NRC regulations by reference and is currently working to separate the X-ray regulations from the currently combined regulations. The Program Manager anticipates the Program will complete this task by the end of July 2008.

Event reporting, including follow-up and closure information in NMED.

Since the 2007 IMPEP review the Program had one event which required review and reporting to NMED. All NMED information is currently up to date.

Response to incidents and allegations.

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are reviewed for their affect on public health and safety and staff is dispatched to perform onsite investigations when necessary. The Program Manager has placed a high emphasis on maintaining an effective response to incidents and allegations.

Status of allegations and concerns referred by the NRC for action.

No allegations were referred by NRC to the Program since the 2007 review.

Significant events and generic implications.

Nothing to report.

Current State Initiatives.

Nothing to report.

Emerging Technologies.

Nothing to report.

Large, complicated, or unusual authorizations for use of radioactive materials.

Nothing to report.

State's mechanisms to evaluate performance.

The Program has a master database that they use to track inspections and licensing activities.

The Program Manager performs accompaniments of the inspection staff to ensure they are performing at the expected level. Staff accompaniments are also being performed by Minnesota.

Current NRC initiatives.

NRC staff discussed ongoing initiatives with the Program. These included pre-licensing guidance, fingerprint orders, national source tracking, web based licensing, generally licensed devices, and the issues associated with tritium exit signs.

Summary.

While faced with an unexpected loss of staff, the North Dakota Program has continued to effectively maintain health and safety, and keep the Program viable. It should be noted that the Minnesota Program has played a large role in North Dakota's success.

Schedule for the next IMPEP review.

It is recommended that another Periodic Meeting be held with the State in 18 months with the next IMPEP review to be held in three years.

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