



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

January 9, 2003

Richard Ratliff, Chief
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3189

Ms. Susan Jablonski, Technical Advisor
Office of Permitting, Remediation
and Registration
Texas Commission on Environmental Quality
P.O. Box 13087, MC 122
Austin, Texas 78711-3087

Dear Mr. Ratliff and Ms. Jablonski:

A periodic meeting with Texas was held on December 2, 2002. The purpose of this meeting was to review and discuss the status of Texas's Agreement State program. The NRC was represented by Ken Brockman from NRC's Region IV office, James Myers from the NRC's Office of State and Tribal Programs, and me.

I have completed and enclosed a corrected copy of the general meeting summary of the topics discussed at the meeting, including any specific actions that will be taken as a result of the meeting. The general meeting summary attached to the December 20, 2002, letter was an interim draft and contained errors. I apologize for any inconvenience this has caused.

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 VHC@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
As stated

cc w/enclosure
Paul Lohaus, Director, OSTP

bcc:
 SPO1
 K. Brockman
 L. McLean
 V. Campbell
 J. Myers, OSTP
 K. Schneider, OSTP
 L. Rakovan, OSTP
 B. Maier
 J. Whitten

DOCUMENT NAME: S:\DNMS\SAO\Periodic Meetings\2003\TX DOH-TCEQ\letter.wpd

To receive copy of document, indicate in box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	RIV:RSAO		D:DNMS			
NAME	VHCampbell		KEBrockman			
	/RA/		/RA/			
DATE	1/09/03		1/09/03			

OFFICIAL RECORD COPY

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR TEXAS

DATE OF MEETING: December 2, 2002

ATTENDEES:

NRC

Vivian Campbell, Regional State Agreements Officer
Ken Brockman, Division Director, Division of Nuclear
Material Safety, Region IV
James Myers, Agreement State Project Officer,
Office of State and Tribal Programs (by phone)
Lance Rakovan, Office of State and Tribal Programs (by phone)

State of Texas

Texas Department of Health, Bureau of Radiation Control (the Bureau):
Richard Ratliff, Chief, Bureau of Radiation Control,
Ruth McBurney, Director, Division of Licensing, Registration and Standards
Arthur Tate, Director, Division of Compliance and Inspection
Cindy Cardwell, Deputy Director, Regulations and Standards
Bill Silva, Deputy Director, Radioactive Materials Inspection
Robert Free, Deputy Director, Emergency Response & Incident Investigation
Pete Myers, Deputy Director, Radioactive Materials Licensing
Gary Smith, Deputy Director, Technical Assessments
Ruben Cortez, Deputy Director, Environmental Monitoring
Bob Green, Acting Deputy Director, Compliance, Radioactive Materials
Brad Caskey, Manager, Incident Investigation
Helen Watkins, Incident Investigation
Bob Burkhart, Environmental Monitoring

Texas Commission on Environmental Quality (the Commission):
Susan Jablonski, Technical Advisor, Office of Permitting, Remediation and
Registration
George FitzGerald, Team Leader, Radioactive Material Licensing

DISCUSSION:

The following is a summary of the meeting held in Austin, Texas on December 2, 2002, between representatives of the NRC and the State of Texas. During the meeting, the topics suggested in a letter dated October 17, 2002, from Ms. Campbell to Mr. Ratliff and Ms. Jablonski were discussed. The discussion pertaining to each topic is summarized below.

1. Action on Previous IMPEP Review Findings

The previous Integrated Materials Performance Evaluation Program (IMPEP) review was conducted during the period August 27 - 31, 2001. The status of the recommendations outlined in Section 5.0 of the final IMPEP report was discussed.

The status of the recommendations for Texas is summarized below.

- a. **Recommendation:** The review team recommends that the Department (Bureau) adhere to the policy of annual supervisory accompaniments of all qualified inspectors.

Current Status: The Bureau indicated that all but three of the inspector accompaniments were completed, and the three outstanding accompaniments were overdue. Bureau management anticipates completing these accompaniments within the next 60 days, and plans to require monthly status reports of the annual accompaniments for the Director of the Division of Compliance.

It is recommended that this item be reviewed at the next IMPEP review.

- b. **Recommendation:** The review team recommends that the Department (Bureau) report all significant and routine events as well as follow-up event information to the NRC in accordance with the STP Procedure SA-300, "Reporting Material Events."

Current Status: As part of the preparation for the periodic meeting, the NRC staff reviewed all the reportable events that were reported to NMED by the Bureau since the previous IMPEP review. The review identified that 20 of the 33 significant events reported by the Bureau were not reported in accordance with the STP Procedure SA-300, "Reporting Material Events." This subject is discussed in further detail in Item 9 of this document.

It is recommended that this item be reviewed at the next IMPEP review.

- c. **Recommendation:** The review team recommends that the Department (Bureau) prepare necessary supporting documentation identifying the bases for the licensing actions associated with reclamation plans for the three conventional mills.

Current Status: The Bureau is actively working on preparing this supporting documentation for the three conventional mills. Reclamation of one of the mill sites is expected to be completed by 2003 or 2004. The other two mills have significant ground water issues and the Bureau does not anticipate closure in the near future.

It is recommended that this item be reviewed at the next IMPEP review.

The status of the recommendation for NRC is summarized below.

Recommendation: The review team recommends that NRC, in coordination with the Agreement States, re-evaluate the two-person rule to assess the effectiveness of the intended outcomes, including experience from past events, and propose a strategy and rule interpretation that best achieves the goal of safety.

Current Status: NRC convened a working group composed of staff from NRC and Agreement States to re-evaluate the two-person rule. The team effort should be completed soon. The final product should be completed by January 2003.

2. Strengths and Weaknesses of the Program

THE BUREAU:

Program Strengths: The Bureau has well trained, experienced, and dedicated staff members who are often called on as resources by both federal and other state agencies. The licensing and inspection staff are highly skilled. The Bureau has excellent emergency response and investigation capabilities, and, at the current time, has adequate support from administrative staff and laboratory services. The Bureau also has well-trained staff specifically dedicated to rulemaking activities. The Bureau highlighted stakeholder involvement in regulatory activities as a program strength. The State has an active and experienced Radiation Advisory Board.

Program Weaknesses: The most notable challenge facing the Bureau is the potential loss of a significant percentage of experienced technical and managerial staff to retirement. The Bureau has had nine staff members retire and, subsequently, return as full-time employees. This arrangement is a short term fix for the staffing issue. Management has considered cross-training as a mechanism to address the resource issue; however, the dilemma of the appearance of preselection has discouraged management from pursuing this approach. Bureau management recognizes the difficulty of recruiting replacement staff with equivalent training and experience. They have not been able to offer competitive salaries as compared to industry, other states, and the federal government. Furthermore, the incentives to retain employees are limited since the State does not give automatic cost of living pay increases and the funds for merit raises are limited. In addition, the legislature has imposed a full time equivalent (FTE) cap for each state agency. This legislation has limited the Bureau's ability to hire full-time staff with increasing workloads.

Texas Department of Health management has cut or redirected approximately 1 percent of the program's funding over a two-year period. In the past, the Bureau has used vacant positions' salary savings to fund the training program. With the budget cuts and the State mandated travel cap, the Bureau may not be able to provide training to new staff in a timely manner.

Since 1998, the Department has undergone several legislatively-directed agency evaluations aimed at improving business operations. Based on the results of these evaluations, the Department formed a team to look at consolidation of financial, human resources, and information systems services. The Department is in the process of implementing a consolidation of administrative services by December 31, 2002. Bureau management expressed their concern that the initiative to consolidate the Department's administrative staff may impact the efficiency and effectiveness of the Bureau's day-to-day operations. The full impact of these changes remains unknown.

THE COMMISSION:

Program Strengths: The Commission currently has five experienced, well educated, and committed staff who have made progress on decommissioning the seven remaining buried radioactive waste disposal sites. One site was licensed for continued on-site disposal of depleted uranium catalyst, and one site was decommissioned with release

for unrestricted use. Two sites are expected to be released for unrestricted use prior to the end of calendar year 2003, and the other three sites are on schedule for resolution within the next two to four years.

In 2001, bills were introduced to the 77th State Legislative Session that addressed management of low-level radioactive waste through near surface disposal, above-ground disposal or assured isolation. No bill was passed during that Legislative Session; therefore, no additional action could be taken. However, the Commission is anticipating that revised low-level radioactive waste management bills will again be introduced early in the 78th Legislative Session which will meet the State of Texas Compact agreement with the States of Vermont and Maine.

Program Weaknesses: If legislation passes and a major licensing action is received, the Commission will not be adequately staffed to complete a waste site review. Over the past 4-5 years, the Commission has lost \$14 million in funding and half of its staff. The Commission anticipates the need for 10-12 staff, but remains in a hiring freeze since April 2002. With the hiring of new staff, training may become a major issue for the Commission as there will not be adequate funding for training since the training program is funded entirely through licensing fees. Specific training will be needed in the areas of decommissioning and LLW disposal. In addition, all out-of-state travel must be approved by the Executive Director's office because of the State mandated travel cap presenting another problem with regard to training outside the State.

3. State Feedback on NRC's Program

THE BUREAU:

Bureau management requested that NRC reconsider communicating with the Governor on an annual basis to inform him of the status and value of the State's radiation safety program. Bureau management acknowledged that NRC had been reluctant to provide such a brief in the past. Although Texas has been an Agreement State since March 1, 1963, the State is concerned because the current Governor may not be fully aware of the importance of the agreement between NRC and the State. Considering the present importance of national security and the State's existing budget and funding issues, Bureau management believes that such a brief could be helpful in maintaining adequate funding for the program.

Bureau management also acknowledged their commitment to the national materials program and the value of participating in the NRC/Agreement State Working Groups. Because of today's economic environment, it is extremely important that they understand the full extent of the resource commitment. The Bureau requested that the goal and resource commitment for a particular project be clearly outlined prior to requesting Agreement State participation.

Finally, Bureau management requested that NRC consider restoring the training funding program, or provide other alternatives to allow the State's participation in training courses with minimal cost or impact to the State. The Bureau suggested that the option for students to participate via Internet or video-conference would be extremely helpful.

THE COMMISSION:

The Commission agreed to fund 10 percent of the cost for decommissioning the Gulf Nuclear-Tavenor and the Gulf Nuclear-Webster sites. The Department's original estimate of the cleanup cost was \$3.4 million; however, the cost has risen to over \$12 million. The EPA has removed the greater than Class C waste from the Gulf Nuclear sites under emergency removal provisions and sent the waste to Waste Control Specialists located in Andrews, Texas. The Commission finds their role as providers of long term operations and maintenance of any waste not immediately disposed to be problematic. The Commission requested that NRC facilitate contact with the Department of Energy so that the State may discuss long term maintenance of this waste.

The Commission does not have an applicant as a source of funding. Commission management also requested NRC support to provide regularly scheduled and free, or inexpensive, technical training.

4. Recent or Pending State Program Changes

THE BUREAU:

There are no pending Bureau program changes with regard to legislative changes or distribution of responsibilities. As discussed earlier, the Department is implementing a consolidation of administrative services by December 31, 2002. Overall, the Bureau has experienced approximately 30 percent turnover since the IMPEP in August 2001. The radioactive material licensing program has been significantly impacted with a 50 percent staff turnover. Due to the State's budget shortfall, the Bureau is now experiencing significant budget and funding issues.

THE COMMISSION:

Since the IMPEP, the Texas Natural Resource Conservation Commission has been reestablished under the name of Texas Commission on Environmental Quality. While the Radioactive Material Licensing organization has not been affected, senior level management within the Commission has changed. There have been no changes in the distribution of responsibilities. The Radioactive Material Licensing organization was able to post and replace a senior geologist staff position in spite of the mandated hiring freeze. There have been no legislative changes since the IMPEP; as discussed earlier, the Commission anticipates that a revised bill for a Low-level Radioactive Waste Management Facility will be proposed this coming Legislative Session. The Commission is experiencing the same pressure to conserve funds as the Bureau due to the budget shortfall in the State of Texas.

5. NRC Program or Policy Changes That Could Impact Agreement States

Mr. Brockman was introduced to the State staff as the new Director of the Division of Nuclear Materials Safety in Region IV. Mr. Myers informed the State that Ms. Rosetta Virgilio will be the new State Liaison Officer in the Office of State and Tribal Programs. Mr. Myers and Ms. Campbell discussed that NRC is working on a continuance for its budget and NRC's funding is restricted to the previous approved levels. The NRC staff

also discussed Homeland Security being one of the major issues that will face the States in the future.

6. Internal Program Audits or Self Assessments

THE BUREAU:

The Bureau conducted a comprehensive audit of the Licensing, Compliance, and Inspection program. Bureau management assembled a working group to evaluate the program using a risk-based approach and to focus on streamlining operations. The group developed recommendations for improving service and surveyed staff to identify the recommendations that should be implemented. The Bureau is currently in the process of implementing these changes. The Bureau has an inspection backlog due to staff turnover. However, they expect to catch up once staffing is stable.

THE COMMISSION:

The Commission has not conducted a formal audit of their program since the IMPEP. However, the Radioactive Materials Licensing team regularly discusses the program with the Waste Permits Division Director to determine areas of improvement. A comprehensive internal audit of the Waste Permits Division is anticipated during calendar year 2003.

7. Status of Allegations Referred by NRC to the State

THE BUREAU:

There were two allegations forwarded to the Bureau by Region IV during this review period, and they were appropriately resolved.

THE COMMISSION:

The NRC has not referred any allegations to the Commission during the review period.

8. Compatibility of Texas Rules and Regulations

THE BUREAU AND THE COMMISSION:

The State has traditionally maintained a high standard of compatibility in the area of rules and regulations. The ASPO agreed to assist the Bureau and the Commission to review the status of the regulations using the State Regulation Status data sheet as a basis for the review.

9. Nuclear Material Events Database (NMED)

THE BUREAU:

In preparation for the periodic meeting, the NRC staff reviewed all the reportable events submitted to NMED by Texas since their IMPEP review and provided a detailed evaluation of the survey to the Bureau prior to the periodic meeting.

The staff's review found that 20 of the 33 significant events reported by the Bureau were not reported in accordance with the STP Procedure SA-300, "Reporting Material

Events." Although the Bureau had closed many events, the NRC staff also identified 17 events with an incomplete record. The NRC staff discussed the importance of reporting significant events to NRC within 24 hours of notification and of ensuring that routine and follow up event information is provided to NMED on at least a monthly basis.

The Bureau indicated that in some cases the NMED date data field did not accurately reflect the date the State received the event report and that their records showed only three incomplete event records. The Bureau modified their event notification procedure to address the identified timeliness issue and provided a copy of their procedure to the NRC staff. The Bureau also requested followup to identify the discrepancy in additional information needed to complete NMED event reports. The NRC staff agreed to bring this issue to the attention of NRC's NMED project manager.

The NRC staff observed, following discussions with the State, that there are differing expectations between NRC and the States on the issue of NMED reports and reporting processes. For example, once again the issue of "closed" verses "incomplete" came into discussion. This issue is one that needs more clarification and understanding if NMED is to be a fully functioning database. The issue of timeliness of reporting events to NRC has again been discussed with the State, and once again, the State has modified its procedures to facilitate prompt reporting of events to NMED in an effort to meet the standards in SA-300.

Both of these issues, among others, have been previously identified during recent IMPEP reviews and it appears that more work at all levels is necessary to unify the expectations among all parties using NMED.

THE COMMISSION:

The Commission has not had an event item to report to NRC during this period.

10. Schedule for next IMPEP Review

The next IMPEP is scheduled for fiscal year 2005.