



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 E. LAMAR BLVD., SUITE 400
ARLINGTON, TEXAS 76011-4125

July 2, 2008

Richard A. Ratliff, P.E., LMP
Radiation Control Program Director
Division for Regulatory Services
Department of State Health Services
1100 West 49th Street, MC 2828
Austin, Texas 78756-3189

Dear Mr. Ratliff:

A periodic meeting with you and your staff was held on June 9, 2008. The purpose of this meeting was to review and discuss the status of the Texas Agreement State Program. The NRC was represented by Mr. Charles Miller and Mr. Dennis Sollenberger from NRC's Office of Federal and State Materials and Environmental Management Programs (FSME), and me. Topics and issues of importance discussed at the meeting included a detailed discussion of recommendations from the 2006 IMPEP review.

I have completed and enclosed a meeting summary for the June 9, 2008 meeting, including any specific actions resulting from the discussions. A separate meeting summary was prepared and sent to the Texas Commission on Environmental Quality for the meeting held on June 10, 2008.

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 Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for TDSHS

(cc listing on next page)

Texas Department of State Health Services

-2-

cc w/enclosure:

Susan M. Jablonski, P.E.
Director, Radioactive Materials Division
Office of Permitting, Remediation and
Registration
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, Texas 78711-3087

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE TEXAS
DEPARTMENT OF STATE HEALTH SERVICES

DATE OF MEETING: JUNE 9, 2008

NRC Attendees	
Randy Erickson, RSAO	Dennis Sollenberger, FSME
Charles Miller, Director, FSME	

Texas Attendees	
Kathryn Perkins, RN, Asst. Commissioner	Darice Bailey, Manager, RAM Insp. Group
Susan Tennyson, Director, Env. Section	Robert Free, Manager, Env. Mon. Group
Debbie Peterson, Unit Manager	Barbara Taylor, HP II
Richard Ratliff, Director, Rad. Control	David Fogle, HP II
Alice Rogers, P.E., Manager, Insp. Unit	Ruben Cortez, HP II
Cindy Cardwell, Manager, Policy Group	Art Tucker, HP I
Thomas Cardwell, Manager, Insp. Branch	Eric Skotak, HP I

DISCUSSION:

The Texas Agreement State Program is administered by two State agencies, the Department of State Health Services (the Department) and the Texas Commission on Environmental Quality (TCEQ). At the time of the 2006 IMPEP review, the Department regulated approximately 1,650 specific materials licenses. The responsibility for the uranium recovery and byproduct disposal facilities, and radioactive waste processing and storage facilities were transferred to TCEQ in June of 2007.

The previous follow-up IMPEP review was conducted the week of November 13-17, 2006. At the conclusion of the review the team found Texas' performance to be satisfactory for the performance indicators, Technical Staffing and Training, Status of Materials Inspection Program, and Technical Quality of Inspections. Texas' performance for the performance indicator, Technical Quality of Incident and Allegation Activities, was found to be satisfactory, but needs improvement. The review team made one recommendation regarding Program performance. Additionally, the review team recommended, and on February 2, 2007, the Management Review Board (MRB) agreed, that the Texas Agreement State Program be found adequate, but needs improvement, and compatible with the U. S. Nuclear Regulatory Commission's (NRC) program. The MRB also concluded that the period of Heightened Oversight should end and a period of Monitoring should be implemented.

ENCLOSURE

The proposed status for the recommendation from the 2006 Texas final IMPEP report is summarized below.

- The review team recommends that the Department report all significant and routine events, as well as follow-up event information, to the NRC in accordance with STP Procedure SA-300, "Reporting Material Events." (Section 2.4) (Open recommendation from the 2001 IMPEP Report).

Previous Status: During the 2001 and 2005 IMPEP reviews, timeliness of event reporting was identified as a weakness. The review team also noted that the Department had not updated NMED records with follow-up or closure information even though they had closed out NMED records. During the 2006 IMPEP review, the team noted improvements in the area of event reporting, but the improvements had not been in place long enough for the review team to fully evaluate their effectiveness or if those improvements could be sustained.

Current Status: The Department continues to make improvements to the Incident and Allegations Program. Additional staff members have received NMED training in June of 2005 and again in May of 2008. The staff has remained stable until recently when one staff member left the Department. Following the 2006 review, a comprehensive database was developed to ensure the timely reporting of incidents. The system flags each incident investigator each morning with all open investigations which must be manually closed to proceed with other activities. This feature allows management the opportunity to see what events are open and follow-up appropriately. All facets of the event are linked to the database and it can be comprehensively searched for any event the Department has reviewed. The Department reported that since development of this database, they have not experienced any late reporting of events. The Department also expressed concern about the length of time between submittal of an incident report, and when the NMED contractor actually enters the data into the national database. The Department noted that this lag time can be up to three weeks which can give the appearance that the Department was late in reporting the incident.

This recommendation should be verified and closed at the next IMPEP review.

Other topics covered at the meeting included.

Program Strengths: The Texas Program is a very busy program with a highly motivated and dedicated staff. While the Department has experienced staff losses since the last IMPEP review, they have successfully filled vacated positions with talented individuals bolstering the Program's already broad knowledge base. Several staff members have been, and others currently are involved in NRC working groups. Many staff members are also active participants on IMPEP teams. The Department has integrated the workload associated with Increased Controls and Fingerprinting requirements without falling behind in other Program areas. Increased Controls requirements are already in rule, and Fingerprinting requirements are currently in the rulemaking process. Staff members work well together providing a high level of customer service to their licensees,

ENCLOSURE

and Department management has worked diligently to ensure that a proper balance is achieved within the program.

Program Weaknesses: The Department identified areas where weaknesses have existed and many involve funding. To date, the Department has been able to conduct the increased control inspections, issue fingerprinting license conditions, and implement new pre-licensing guidance while still meeting its inspection and licensing obligations. However, Department management noted that additional unfunded security-related requirements are expected to severely strain the Department's resources. The Department has placed restrictions on capital expenditures which has prevented the Program from expanding the use of laptop computers with internet access for their home based employees. The Department has also been restricted in the starting salaries they can offer new employees which limits the experience level of new hires, and while NRC is now funding staff training, the number of available training classes and the seats available in each has limited their opportunities.

Staffing and training:

The Texas Program is a large program which is divided into several program areas. The Radioactive Materials Inspection Group currently has 16 technical staff with one vacancy, the Radioactive Materials Licensing Group currently has 11 technical staff and one vacancy, the Policy, Standards and Quality Assurance Group has six technical staff and one vacancy, the Environmental Monitoring Group has three technical staff and one vacancy. Of the noted vacancies, two are posted and one position has recently become vacant.

The Department continues to have difficulty obtaining out of state travel funding. While out of state travel is not a complete impossibility, it has placed a constraint on the ability of multiple staff to participate together in out of State training.

Program reorganizations:

The Department has not experienced any overall program reorganizations since the previous IMPEP review and none are expected; however, responsibility for the uranium recovery and byproduct disposal facilities, and radioactive waste processing and storage facilities were transferred to TCEQ in June of 2007.

Changes in Program budget/funding:

The Department has not experienced significant problems with budgeting or funding. The Department is fee funded. The most recent change to the Department's funding came in 2007 when the uranium and waste programs were transferred to TCEQ.

Materials Inspection Program:

The Department reported that they currently have no overdue inspections. Routine inspections are generally performed by the due date, but because of intermittent staff losses, occasionally inspections are performed within the +25 percent window. Initial inspections are performed within 12 months of issuance. They continue to inspect reciprocity licensees and have not had difficulty performing inspections on at least 20 percent of candidate reciprocity licensees. The Department initially identified 224 licensees who were required to implement Increased Controls. The Department reported that all Increased Controls inspections were performed timely and that the requirement to perform these inspections within the three year window did not cause any routine inspections to be performed late.

Regulations and Legislative changes:

The Department reported that they are up to date on all regulations except for issues involving medical training and experience compatibility. The Increased Controls requirements are currently in rule and the Fingerprinting requirements are in the rulemaking process. No other legislative changes are anticipated. It was noted that not all of the final regulations had been submitted to NRC for review. These regulations (Texas Sections 289.251, 289.252, and 289.258) were adopted by the state in May 2008. The submittal package for NRC is being prepared.

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

The Department reported that all NMED information with the exception of seven open items is currently up to date.

Response to incidents and allegations.

The Department continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. 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.

Six allegations were referred by NRC to the Department since the 2006 review. None of the allegations referred by NRC required the Department to respond back.

Significant events and generic implications.

The Department reported two significant enforcement actions since the 2006 review. One involved an overexposure and one was a medical event. None involved generic implications.

ENCLOSURE

Current State Initiatives.

The Department plans to investigate a flat fee structure for emergency response activities at nuclear power plants instead of the actual cost reimbursement they currently have in place. These funds would be paid directly to the Department and not to general revenue.

The Department is developing an exceptional item for the next legislative session. It is an appropriations request to address staff shortages caused by security related mandates. The item should address staffing, but also includes amounts needed for laptops for home based employees, out of state travel funds, and salaries for recruitment, retention and training of employees.

Emerging Technologies.

None noted.

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

None noted.

State's mechanisms to evaluate performance.

Department managers review performance reports involving licensing actions, inspections performed, incidents reported, and reports reviewed.

Inspector accompaniments are also performed to ensure they are performing at the expected level.

Current NRC initiatives:

NRC staff discussed ongoing initiatives with the Department. 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:

The Department appears to have spent a significant amount of time and effort to correct the issues facing the Program. The final recommendation involving Incidents and Allegations had been vastly improved at the time of the 2006 review. However, at that time, the Department had not been able to demonstrate a period of sustained performance in this Program area; therefore, the review team recommended it remain open. During the 2008 Periodic Meeting, the Department was able to demonstrate a new tracking database developed in direct response to the recommendation. The Department also sufficiently demonstrated a period of sustained performance indicating that since inception of the database, they have not experienced any late reporting of events.

ENCLOSURE

For that reason, it is recommended that the Management Review Board consider removing the Texas Department of State Health Services from Monitoring.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held in two years.



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July 2, 2008

Susan M. Jablonski, P.E.
Director, Radioactive Materials Division
Office of Permitting, Remediation and
Registration
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Ms. Jablonski:

A periodic meeting with you and your staff was held on June 10, 2008. The purpose of this meeting was to review and discuss the status of the Texas Agreement State Program. The NRC was represented by Mr. Charles Miller and Mr. Dennis Sollenberger from NRC's Office of Federal and State Materials and Environmental Management Programs (FSME), and me. Topics and issues of importance discussed at the meeting included the status of program areas of the Texas Agreement State Program under the purview of the Texas Commission on Environmental Quality.

I have completed and enclosed a meeting summary for the June 10, 2008 meeting, including any specific actions resulting from the discussions. A separate meeting summary was prepared and sent to the Texas Department of State Health Services for the meeting on June 9, 2008.

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 Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for TCEQ

(cc listing on next page)

Texas Commission on Environmental Quality

-2-

cc w/enclosure:

Richard A. Ratliff, P.E., LMP
Radiation Control Program Director
Division for Regulatory Services
Department of State Health Services
1100 West 49th Street, MC 2828
Austin, Texas 78756-3189

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DATE OF MEETING: JUNE 10, 2008

NRC Attendees	
Randy Erickson, RSAO	Dennis Sollenberger, FSME
Charles Miller, Director, FSME	

Texas Attendees	
Susan Jablonski, Director, TCEQ	Gary Smith, Ph.D., Manager UTA, TCEQ
Devane Clarke, Manager RML, TCEQ	Beryl Thatcher, Spec. Assistant, TCEQ

DISCUSSION:

The Texas Agreement State Program is administered by two State agencies, the Department of State Health Services (the Department or DSHS) and the Texas Commission on Environmental Quality (TCEQ). At the time of the 2006 IMPEP review, TCEQ's regulatory authority was for low-level waste disposal and the groundwater protection responsibilities for in situ leach uranium recovery facilities. The responsibility for the uranium recovery and byproduct disposal facilities, and radioactive waste processing and storage facilities were transferred to TCEQ in June of 2007. TCEQ's 11e.(2) byproduct material (uranium recovery activities) regulatory authority currently includes three conventional uranium mills (three tailings impoundments closing down) and five in-situ uranium mines (four active licenses and one revoked license). The TCEQ recently issued a license for a commercial 11e.(2) byproduct material disposal facility.

The previous IMPEP review was conducted the week of November 13-17, 2006. The review did not address TCEQ responsibility except for the Department's activities for those responsibilities recently transferred as discussed above.

Other topics covered at the meeting included.

Program Strengths: The TCEQ portion of the Texas Program is a very busy program. While the Program initially experienced the disruption of reorganization, a highly motivated and dedicated staff helped the Program adjust and move forward. Increased interest in uranium exploration has helped the Program to grow with new positions being requested. Staff members work well together providing a high level of customer service to their licensees, and Program management has worked to ensure that a proper balance is achieved within the program.

Program Weaknesses: Retention of staff, budgetary issues, and issues associated with out of state travel are the major hurdles facing the Program.

ENCLOSURE

Staffing and training:

The TCEQ Radioactive Materials Division is divided into two program areas. The Uranium and Technical Assessments Section (UTA) currently has 11 technical staff and two vacancies. The Radioactive Materials Licensing Section (RML) has 10 technical staff and no vacancies. Both of the UTA positions have been posted.

TCEQ experiences the same difficulties obtaining out of state authorization as does the DSHS portion of the program. This restriction has limited the ability for multiple staff to participate together in out of state training even for NRC sponsored training. TCEQ has not yet developed a formal training program; however, most TCEQ staff have advanced degrees and a high level of experience in their respective fields. The junior staff works closely with senior staff to learn in a cross training effort.

Program reorganizations:

In June 2007, TCEQ received responsibility for the uranium recovery and byproduct disposal facilities, and radioactive waste processing and storage facilities. As a result the Radioactive Materials Division was created. The existing Technical Assessment Group in the Department was essentially transferred in mass to TCEQ including recently added technical positions supporting the uranium recovery activities.

Changes in Program budget/funding.

The Radioactive Materials program has not experienced significant problems with budgeting or funding. The most recent change came in 2007 when the uranium and waste programs were transferred to TCEQ.

Materials Inspection Program:

The inspections for the uranium recovery facilities are conducted by the Compliance Division and Radioactive Materials Division. The reorganization did not affect this activity.

Regulations and Legislative changes:

The legislature transferred the responsibility for 11e.(2) byproduct material and waste processors to TCEQ in 2007. No other legislative changes are anticipated. TCEQ is in the process of revising its regulations to adopt in situ uranium recovery requirements and other requirements resulting from the transfer of responsibility.

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

TCEQ did not have any events to report to the NMED system.

ENCLOSURE

Response to incidents and allegations.

TCEQ has not had any significant incidents or allegations during the period.

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

No allegations were referred by NRC to TCEQ since the 2006 review.

Significant events and generic implications.

No significant events or generic implication were identified by TCEQ since the last IMPEP review.

Current State Initiatives.

None noted.

Emerging Technologies.

None noted.

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

TCEQ reported that a low-level radioactive waste and mixed waste disposal application and a recently licensed commercial 11e.(2) byproduct material disposal facility are examples of large and complicated authorizations currently being worked.

State's mechanisms to evaluate performance.

TCEQ managers review performance reports involving licensing actions, inspections performed, and other technical reports to determine if the program is effective. Inspector accompaniments are also performed to ensure they are performing at the expected level.

Current NRC initiatives:

NRC staff discussed ongoing initiatives with the Program. The NRC's experience with the new applications for uranium recovery facilities, the generic environmental impact statement for ISL facilities, and the development of the ISL rulemaking amending 10 CFR Part 40 were discussed.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held in two years.

ENCLOSURE