



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION I  
2100 RENAISSANCE BLVD., SUITE 100  
KING OF PRUSSIA, PA 19406-2713

June 12, 2017

Marissa J. Levine, MD, MPH  
Deputy Commissioner  
Virginia Department of Health  
109 Governor Street  
Richmond, VA 23219

Dear Dr. Levine:

A periodic meeting with the Commonwealth of Virginia's Office of Radiological Health was held on April 25, 2017. The purpose of this meeting was to review and discuss the status of the Virginia Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by Paul Michalak 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 August 1, 2017 at 1:00 pm. Call in information for the MRB will be provided in a separate transmission.

If you feel that the 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.ford@nrc.gov](mailto:monica.ford@nrc.gov) to discuss your concerns.

Sincerely,

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

Enclosure:  
Periodic Meeting Summary for Virginia

cc w/encl.: Steve Harrison, Director  
Virginia Department of Health  
Division of Radiological Health

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR  
 VIRGINIA DEPARTMENT OF HEALTH'S  
 OFFICE OF RADIOLOGICAL HEALTH

DATE OF MEETING: April 25, 2017

<b>NRC Attendees</b>	<b>Virginia Department of Health Attendees</b>
Monica Ford, Regional State Agreements Officer, Region I	Marissa Levine, MD, MPH, FAAFP State Health Commissioner, Virginia Department of Health (exit only)
Paul Michalak, Branch Chief, Agreement State Programs Branch, Office of Nuclear Material Safety and Safeguards (NMSS)	Steven Harrison, Director, Office of Radiological Health
	Charles Coleman, Radioactive Materials Program
	Anthony Sands, Radioactive Materials Program
	Beth Schilke, Radioactive Materials Program

**DISCUSSION:**

During the November 2014 Integrated Materials Performance Evaluation Program (IMPEP) review of the Virginia Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for five of six indicators reviewed, and satisfactory, but needs improvement for the indicator Status of the Materials Inspection Program. Early in the 2014 IMPEP review period, the Program had experienced a backlog in inspections due, in part, to having a shortage of qualified staff to complete inspections within the required timeframe. The Program took corrective action during the review period to eliminate the backlog of overdue inspections. The Management Review Board (MRB) evaluated the Commonwealth's action, found the Commonwealth addressed the root cause of the overdue inspections, took effective corrective action, and determined that the indicator Status of the Materials Inspection Program should be found satisfactory. The MRB found the Program adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. The MRB determined the next IMPEP review should be held in five years since all performance indicators were found satisfactory (on two consecutive IMPEP reviews) and that a periodic meeting should be held midway through the IMPEP review cycle.

A periodic meeting was held with the Program on April 25, 2017. This summary is a reflection of that periodic meeting.

## TOPICS COVERED DURING THE MEETING INCLUDED:

### Feedback on the NRC's Program

The director of the Office of Radiological Health (the director) stated that he appreciates the open dialogue that the Commonwealth has with the NRC. Additionally, he stated that the NRC is always very timely in response to the Commonwealth's questions and requests. NRC funding of training was also discussed. The director stated that if it were not for the NRC's funding of training and associated travel, the Commonwealth could not afford to send the staff to training. The director was appreciative of NMSS staff efforts to ensure that Commonwealth staff get all the training opportunities they need and that travel vouchers are processed in a timely manner.

The director went on to express some frustration concerning the process by which the NRC reviews State regulations. The director stated it was his understanding that the NRC only reviewed a State's regulations once they are final. Consequently, any comments received from the NRC necessitates the State repeat its rulemaking process to address the comments. The NRC staff explained that Office of Federal and State Materials and Environmental Management Programs procedure SA-201 "Review of State Regulatory Requirements," Section V.A.1 states: "States should submit and request NRC comments on both proposed and final regulations to the Deputy Division Director, DMSSA." Submitting regulations in proposed format ensures that the State has the ability to address any comments during the State's rulemaking process. The director very much appreciated this clarification and noted that the Commonwealth intends to submit their regulations in proposed format (as well as in final) going forward.

Program staff mentioned that they are appreciative of the opportunity to participate on IMPEP reviews and for the opportunity to provide comments on draft NRC documents. Additionally staff stated that they found accompanying NRC inspectors, who were conducting inspections in Virginia, to be a great learning experience.

### Organization

The Virginia Agreement State Program is administered by the Program, which is located in the Office of Radiological Health. The Office of Radiological Health is located in the Virginia Department of Health. No program reorganizations have occurred since the last IMPEP review.

### Program Budget and Funding

General funds allocated to the Program were eliminated in fiscal year 2015, making the Program one hundred percent funded by fees. This totaled an approximate \$400,000 decrease in funds for the Office of Radiological Health of which approximately \$200,000 of the shortfall applies to the Radioactive Materials Program. The Program's spending account contains a surplus that is being used to cover the missing funds until a permanent solution is put into place. The Program is assessing options to make up this deficit, which includes the possibility of an increase in fees. However, the process to increase fees will take two to three years to complete.

### Technical Staffing and Training (2014 IMPEP: Satisfactory)

The Program, when fully staffed, is composed of five technical staff members, one program supervisor, and two program support staff. This equates to seven full time equivalents (FTE) for the Program. Of the five technical staff, four perform both licensing and inspection activities and

one performs only inspections. Three technical staff are located centrally in Richmond and two technical staff are located remotely in Yorktown and Bristol. At the time of the periodic meeting there was one vacancy in the Program. This was created when the program supervisor left the Program on September 30, 2016 to take a job in private industry. The Program has posted the position and is working through the process to find a qualified candidate.

The Program has a training and qualification manual compatible with the NRC's Inspection Manual Chapter (IMC) 1248. All program staff are fully qualified license reviewers and/or inspectors. The Program is tracking refresher training for qualified staff and is cognizant of the requirement that qualified staff need to complete 24 hours of training every 24 months.

#### Status of the Materials Inspection Program (2014 IMPEP: Satisfactory)

During the 2014 IMPEP review, the review team determined that the Program completed 16.8 percent of its Priority 1, 2, 3, and initial inspections overdue. An inspection backlog occurred early in the IMPEP review period and had been identified and resolved prior to the IMPEP review. Since the 2014 IMPEP review the Program has completed 345 Priority 1, 2, and 3 inspections, none were performed overdue. The Program attributes its continuing success in performing inspections on time to the addition of another staff person and fulltime administrative support.

The Program completed 21 initial inspections since the 2014 IMPEP review. One initial inspection was completed overdue by two weeks due to a database error. The Program's procedure for initial inspections requires the performance of an initial call to the new licensee within 6 months. The purpose of this call is to verify that the new licensee has received material. In the case of the overdue initial inspection, the Program performed the initial call to the licensee, as required by their procedures, two weeks past the six month mark. When the Program entered that date into the database it pushed out the initial inspection due date by two weeks which led to the Program performing the inspection overdue. Initial inspections, unlike routine Priority 1, 2, 3, and 5 inspections do not have a grace period of +/- 25 percent.

The Program has continued to be attentive to conducting reciprocity inspections. The Program is confident that greater than 20 percent of candidate licensees in calendar years 2015 and 2016 have been inspected.

The NRC staff discussed the NRC's web based licensing (WBL) database with the Program to inquire if there was any interest by the Program in switching from their current database. The director stated that there is currently no interest in WBL since there could be compatibility and interface issues with their current system and there is limited IT support within the Commonwealth for installation of externally hosted software platforms.

#### Technical Quality of Inspections (2014 IMPEP: Satisfactory)

Inspection guidance used by the Program is equivalent to the NRC's Inspection Manual Chapters and Inspection Procedures. The Program uses a form similar to NRC's form 591 to document inspection results. This form can be issued in the field for inspections with no violations. Inspection findings are routinely sent to licensees within 30 days of the completion of an inspection. All inspection reports issued from the office undergo a peer review. Each report receives three signatures: 1) the inspector, 2) the peer reviewer, and 3) the program manager. The Program missed one supervisory accompaniment in calendar year 2015 and completed all supervisory accompaniments for calendar year 2016.

### Technical Quality of Licensing Actions (2014 IMPEP: Satisfactory)

The Program has approximately 400 specific licensees. The Program has completed approximately 300 licensing actions since the last IMPEP review. All licensing actions are worked on in a timely manner, then are peer reviewed before being signed by the program manager. The longest action has been in house approximately six months and is an administrative amendment involving the combination of two licenses held by the same entity into a single license. The Program's licenses are on a five year renewal cycle.

### Technical Quality of Incidents and Allegations (2014 IMPEP: Satisfactory)

The Program has processes in place to maintain an effective response to incidents and allegations. The Program received 17 reportable events since the last IMPEP review. The Program communicates reportable incidents to the NRC Operations Center. Additional follow-up information is updated in the NRC's Nuclear Materials Events Database system.

The Program had seven allegations since the 2014 IMPEP review, of which two were referred from the NRC. The Program evaluates each allegation as it is received and follows up appropriately.

### Compatibility Requirements (2014 IMPEP: Satisfactory)

No legislative changes affecting the Program have occurred since the last IMPEP review. The Program has no regulation amendments overdue for adoption. Currently the Program is working on addressing NRC comments to final regulations.

The Program's regulation review process can take between eight months and three years. If the regulations are exempt, meaning that they directly correlate to an NRC rule change (ex. update to adoption by reference) then the process takes only about eight months from drafting to final regulations. However if the rule change is not exempt then the process could take up to three years.

The Program's rules are subject to periodic review requirements. The rules are currently subject to review every four years (this can be changed by a Governor's Executive Order). If a rule has been amended during the periodic review period and has been reviewed then the requirement can be overridden. It should be noted that rules do not automatically terminate if the review does not happen within the required time period.

### Current State Initiatives

- The Program is continuing to monitor interest in uranium mining.
- The Program is looking to increase fees.

### Emerging Technologies

- Accuboot: used to treat breast cancer after lumpectomy; the Program is currently working on a request from the licensee in regards to Authorized User location during treatment.

- Ge/Ga generators: financial assurance; The Program performed a Health and Safety evaluation and determined that licensees can be exempt from both the decommissioning funding plan (DFP) and financial assurance if they enter into an agreement with the manufacturer or distributor for return of the generator. The decision was made before the NRC issued its guidance in August 2016 (STC-16-065) exempting licensees from only the need to have a DFP. The Program, through its Regional State Agreements Officer, has asked for this difference to be evaluated under IMPEP to determine whether or not there would be an issue with compatibility. The Agreement State Programs Branch has the action and will formulate a response.

#### Large, Complicated, or Unusual Authorizations

- Iluka Resources: This Company possesses, stores, and distributes natural uranium and natural thorium in products. Their license authorizes possession and storage of tailings containing TENORM (a byproduct of the process) for disposal. Zircon is the target mineral. Complications include: environmental controls and near-term decommissioning (the license was issued in 2016 and is expected to be terminated in the fall of 2017).

#### State's Mechanisms to Evaluate Performance

- The program director meets monthly with senior management to provide a full overview of the program and also meets weekly with them to provide high level detail of urgent matters.
- All licensing actions and inspection reports issued from the office get both a peer and managerial review.
- An internal IMPEP review was completed in preparation for the periodic meeting.
- Supervisory accompaniments are completed for all staff each year.

#### Current NRC Initiatives

NRC staff presented several initiatives ongoing at the NRC. These included:

- Updates to the Agreement State Policy Statement
- Government Accountability Office Materials Licensing Audit and Investigation
- Category 3 Source Security and Accountability Working Group
- Agreement State training
- Changing licensing renewals from 10 to 15 years

#### CONCLUSIONS:

The NRC staff recommends that the Commonwealth of Virginia's next IMPEP review be conducted as scheduled in November 2019.