



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

April 30, 2013

Rusty Lundberg, Director
Division of Radiation Control
Utah Department of Environmental Quality
195 North 1950 West
P.O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Lundberg:

A periodic meeting with you, your staff, and counsel from the Utah Attorney General's office was held on March 21, 2013. The purpose of this meeting was to review and discuss the status of the Utah Agreement State Program. The NRC was represented by Stephen Poy from the Office of Federal and State Materials and Environmental Management Programs (FSME); Anton Vogel, Director, Binesh Tharakan, and Marti Poston-Brown from the Division of Nuclear Materials Safety (DNMS) in NRC Region IV, and me. I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

In addition to a discussion of general topics associated with your program, additional discussions to ascertain the status of regulatory changes associated with your Low Level Radioactive Waste and Uranium Recovery programs were also held.

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 817-200-1143 or email me at Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for Utah

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE OF MEETING: MARCH 21, 2013

NRC Attendees	Utah Attendees
Randy Erickson, RSAO	Rusty Lundberg, Director
Anton Vegel, Director, DNMS	Craig Jones, Program Manager
Binesh Tharakan, SAO	Loren Morton, Program Manager
Marti Poston-Brown, SAO	John Hultquist, Program Manager
Stephen Poy, FSME	Tom Rushing, Staff Scientist
	Laura Lockhart, Attorney

DISCUSSION:

The Utah Agreement State Program is administered by the Division of Radiation Control (the Division). The Division is located within the Department of Environmental Quality (the Department).

The previous IMPEP review was conducted the week of July 11-14, 2011. At the conclusion of the review the review team found Utah's performance to be found satisfactory, but needs improvement for the performance indicators, LLRW Disposal Program and Uranium Recovery Program and satisfactory for the other indicators reviewed. The review team made three recommendations regarding the performance of the State.

The review team also recommended and the MRB agreed, that the Utah Agreement State Program be found adequate to protect public health and safety, and compatible with NRC's program.

The current status of the recommendations identified during the 2011 Utah final IMPEP report are summarized below.

- The review team recommends that the Division institute appropriate training in all aspects of the allegation response program to ensure that LLRW and the Uranium Mills program staff have the same competency and consistency in handling allegations as demonstrated by the Radioactive Materials program staff. (Section 4.3.1)

Current Status: The Division reported that allegation training for all staff, including the LLRW and Uranium Mills program staff, was conducted on September 11, 2011. The same staff also received allegation refresher training in March 2013. The Division also generated a new allegation intake form that is designed to direct staff taking allegations to treat both oral and written allegations the same. Under the previous system, oral allegations were treated as additional information and not processed as allegations. The training has also made it clear there are no "off the record" conversations between licensee staff and Division staff.

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- The review team recommends that independent and confirmatory radiation measurements are consistently performed with the appropriate calibrated instruments for inspections conducted by the LLRW and the Uranium Mills program staff. (Sections 4.3.3 and 4.4.3)

Current Status: The Division reported that the training completed in September 2011 and March 2013 also included the selection; use and maintenance of survey instrumentation that is available to all of the inspection staff. The Division updated their inspection forms to include spaces to prompt the inspector to add information associated with the instrument used during inspections such as the serial number, the calibration date, and results of a response check for each survey instrument used. The Division believes these changes will improve consistency between inspectors who perform confirmatory measurements.

- The review team recommends that the Division ensures sufficient numbers and types of calibrated instruments, appropriate to the activities conducted by the licensee, are available to the LLRW and the Uranium Mills program staff and that the staff is trained in the proper use of the instrumentation. (Sections 4.3.3 and 4.4.3)

Current Status: The Division reported that this was also addressed during the training completed in September 2011 and March 2013. In the past, Division inspectors would sometimes rely on the licensees measurements when documenting confirmatory measurements rather than carry several different types of survey instruments. To address this recommendation, the Division now uses their own survey instrumentation for all confirmatory measurements.

Other topics covered at the meeting included.

Program Strengths: The Utah Program is a busy program with a highly motivated staff that is responsible for the licensing and inspection of approximately 200 specific materials licensees. Management support to the Program is good and access to senior management is unencumbered. The Program noted that with the exception of the two newest staff members, most of the staff has been with the Program between 15 and 20 years. They have a high degree of experience and professional maturity which allows them to effectively mentor junior staff members. Staff members work well together providing a high level of customer service to their licensees, and Program management has worked diligently to ensure that a proper balance is achieved within the Program.

The Program noted that another strength is their initiative for increased openness with the public. They are working to become more transparent, have asked for public input before major decisions are made rather than just comments afterward, and transmit information to the public through various forms of social media, particularly for facilities with significant public interest. They currently have Facebook and Twitter accounts, a list server for both the materials and the low level radioactive waste programs, and are currently developing a blog for the Department.

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Program Weaknesses: The Program noted that their main weakness is their ability to easily become inundated and overwhelmed with work, in large part due to requests for comments or data requests from NRC. While they appreciate the ability to comment on draft documents, the number and frequency of these requests, often coming from different organizations within NRC can sometimes overwhelm their already lean and busy staff. Often requests for comments involve subject matter that is of importance to the Division, requires time to research and develop a proper response, but only allows for a 30 day response period. When these various requests overlap or arrive back-to-back, is generally when the Division becomes overloaded.

Feedback on NRC's Program:

- The Division feels that they receive too much information, too quickly and with too little time given for the State to provide a meaningful response. Because these requests come from different areas within the NRC, they are distributed as they are developed with what appears to be little consideration given to the effect they have on a State program. Many of the requests for comment are of importance to the Division and the Division wants to provide meaningful feedback. The Division believes it would be helpful if requests for comments could be sent at a more controlled rate and allow more than 30 days for a response.
- The Division is frustrated by the current depleted uranium regulation development process and the future changes scheduled to begin development in FY2015. These changes are requiring Utah to make decisions that are putting them ahead of what the NRC is doing in this area. However, the Division expressed appreciation for NRC's commitment to and level of stakeholder involvement, particularly for Agreement States and host states, in this important rule development process.
- The Division noted that Part 61 guidance and proposed rule changes have the potential to place an added burden on the Division and other states with a disposal facility as performance evaluations for waste generators shift toward an option based waste acceptance criteria at these facilities. The movement towards increased flexibility for waste generators and their packaging will likely result in a significant resource commitment for waste disposal facilities and the Agreement States that regulate these facilities. The State believes the regulatory burden for ensuring waste acceptable criteria are met should be shared by regulatory agencies in which the waste generators conduct business (i.e.; generate and package waste)
- The Division expressed their appreciation for the support they receive in the form of training from NRC. They noted that training is going well, getting into classes for the new health physics staff has not been difficult and they have thoroughly enjoyed working with Brenda Usilton.

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Staffing and training:

The Utah Program is a busy program which is divided into several program sections (RAM, X-ray, Administrative, Environmental, LLRW/UMills Licensing and LLRW/UMills Compliance). The majority of the staff has been with the program between 15 and 20 years. A Reduction in Force (RIF) occurred in 2009, which was backfilled with a senior staff member, who later retired. As a result, just over a year ago, two new individuals joined the Utah Program in the RAM Program. Both individuals are currently qualified to conduct licensing actions (Phase 1) but are not qualified for the peer review of licensing actions (Phase 2). These individuals are qualified to conduct some types of inspections independently (portable gauges, fixed gauges and medical 100, 200 and 300 material) but are not fully qualified on all the inspection types (such as medical 600 material) performed by the RAM Section.

Program reorganizations:

While there were no Division reorganizations since the previous IMPEP review, at the time of the previous IMPEP review, the Division was in the process of an internal reorganization utilizing the Lean Six Sigma process improvement plan. As a result, the Division reorganized the LLRW and Uranium Mill responsibilities. The Division split the licensing and compliance sections into two separate sections. As a result, a new Compliance Section Manager was named. The current Low Level Waste/Uranium Mills and Radon Section Manager are managing the new licensing section. The Division reported that the internal reorganization within the Division is functioning well.

Changes in Program budget/funding:

The Division's funding for the Radioactive Materials and X-ray Sections comes from the general fund and is comprised of revenue from RAM license fees, X-ray registration fees and X-ray inspection fees. The last fee increase was in 2006. The Division recommended a fee increase this year, but that request did not make it into the Governor's budget.

The Division's funding for the LLRW program comes from a flat licensing fee (rather than a fee based on the waste volumes of the facility) of \$2.06M per year, paid in monthly installments by the LLRW facility. There are separate licensing fees for the three uranium mill sites and the commercial disposal facility.

The State recently passed HB124 which requires the fees collected by the Division associated with low level radioactive waste and that are already placed into a dedicated fund are to be used exclusively for administering radiation control programs. The legislation also doubles the maximum civil penalty that can be assessed per violation and requires waste generators who obtain a permit from the Division to grant the Division reasonable access to their facilities for purposes of evaluating and verifying, with respect to applicable Utah laws and requirements, waste characterization,

classification, and packaging of waste sent to the facility. At the current time there are approximately 140 permit holders who have access to send waste to the LLRW site.

Materials Inspection Program:

The Division stated that they perform inspections at a frequency greater than the frequencies identified in IMC 2800. They also noted that there is a small backlog of overdue inspections based on their program frequencies. They added that there is no backlog on Priority 1-3 inspections based on IMC 2800 criteria.

Licensing Program:

The Division reported that they currently perform license renewals on a five year frequency. The Division also reported that licenses currently under timely renewal have increased significantly, primarily due to the recent turnover in staff in addition to the current policy of renewing licenses every five years. The Division is considering moving to a renewal frequency closer to NRC's renewal frequency of 10 years.

The Division reported they perform pre-licensing visits in accordance with the revised procedures. They noted that a pre-licensing inspection is performed on all new IC licenses, and the license is not issued unless all of the requirements are in place.

Sealed Source and Device Evaluation Program (SS&D):

The Division does not have an active SS&D Program.

Uranium Recovery Program:

At the time of the periodic review, Utah's uranium recovery program had regulatory oversight of four facilities. Since receiving Agreement State status in 2004, the Division has issued a license for the EnergySolutions facility for the receipt, storage, and disposal of 11e.(2) byproduct material and is now in the process of reviewing the renewal application submitted in 2012. Also, the Division is currently in the process of renewing the license for the White Mesa Uranium Mill – the ownership of the facility was recently transferred to Energy Fuels Resources, Inc. The Uranium One Shootaring Canyon Mill is on standby – the potential for the mill to restart is, and has been for several years, uncertain due to uranium market fluctuations. The Rio Algom Mining Lisbon Valley Uranium Mill is currently undergoing decommissioning/reclamation. The licenses for the EnergySolutions and White Mesa Uranium Mill facilities were discussed because of the recent communications between the Division and NRC regarding issues raised by a concerned individual and the 11e.(2) byproduct material license review process under applicable provisions of the Atomic Energy Act.

Low Level Radioactive Waste Program:

At the time of the review, the Division regulated one LLRW disposal facility. EnergySolutions is a commercial LLRW disposal facility located 80 miles west of Salt Lake City in Tooele County.

There were various discussions during the Periodic Meeting with respect to the facility relating to outdated (around 1990) performance concerns provided by a concerned individual, to issues by the State regarding potential impacts of guidance and proposed rule changes to Part 61 with respect to waste classification of low level waste being disposed at the facility coming from outside of the State, and relating to recent changes in statutes regarding site access of out-of-state waste generators.

Regulations and Legislative changes:

The Division reported that three legislative packages were finalized following the 2011 IMPEP review that affected the Program. These included:

- HB124 (2013 General Session) requires that fees collected by the Division associated with low level radioactive waste and that are already placed into a dedicated fund are to be used exclusively for administering radiation control programs. The legislation also doubles the maximum civil penalty that can be assessed per violation and requires waste generators who obtain a permit from the Division to grant the Division reasonable access to their facilities for purposes of evaluating and verifying, with respect to applicable Utah laws and requirements, waste characterization, classification, and packaging of waste sent to the facility.
- SB21 (2012 General Session) adjusted the make-up of the Radiation Control Board and shifted some of the responsibilities of the Board and Executive Secretary of the Board to the Director of the Division.
- SB11 (2012 General Session) changed administrative procedures to a record based process for appeals of agency actions and decisions. Appeals are no longer subject to the trial process but instead go to an administrative law judge who issues a recommendation for consideration of the Executive Director of the Utah Department of Environmental Quality who then renders a decision.

The Division does not have any overdue regulations.

The following are regulation changes and adoptions that will be needed in the future:

- “Decommissioning Planning,” 10 CFR Parts 20, 30, 40, and 70 amendments (76 FR 35512), that is due for Agreement State adoption by December 17, 2015.

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- “Licenses, Certifications, and Approvals for Materials Licensees,” 10 CFR Parts 30, 36, 39, 40, 70, and 150 amendments (76 FR 56591), that is due for Agreement State adoption by November 14, 2014.
- “Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule Text),” 10 CFR Part 31 amendment (77 FR 3640), that is due for Agreement State adoption by January 25, 2015.
- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” 10 CFR Part 71 amendment (77 FR 34194), that is due for Agreement State adoption by August 10, 2015.
- “Technical Corrections,” 10 CFR Parts 30, 34, 40, and 70 amendments (77 FR 39899), that is due for Agreement State adoption by August 6, 2015.
- “Requirements for Distribution of Byproduct Material,” 10 CFR Parts 30, 31, 32, 40, and 70 amendments (77 FR 43666), that is due for Agreement State adoption by October 23, 2015.

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

Since the 2011 IMPEP review, the Division had reported eight events to NMED, with 2 remaining open. The Program will close the open events when they are able to obtain the necessary information.

Response to incidents and allegations.

The Division continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. Incidents are evaluated for safety significance and staff is dispatched to perform onsite investigations whenever possible.

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

The Division reported that since the 2011 IMPEP review, two allegations were referred from the NRC to the Division and that no allegations were received directly by the Division during this period.

A concerned individual from the State of Utah had provided the NRC with a number of concerns relating to compatibility of Utah regulations with Section 274o. of the Atomic Energy Act (AEA). The concerned individual claimed that none of the provisions for administrative proceedings allow for “an opportunity for cross examination” in proceedings associated with licensing actions for the regulation of 11e.(2) byproduct material. During the periodic meeting the Division stated that they are working to develop, in consultation with NRC staff, a process that allows for pre-decisional opportunities of public involvement per the provisions of the AEA. A draft of this would be provided by the Division for NRC

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review after the periodic meeting. A pre-decisional copy of this was provided to the NRC staff on March 22, 2013. It is currently being reviewed by the NRC staff and the staff will respond with comments within 30 days of the date they were provided. After the Division has provided an acceptable set of procedures that complies with the Atomic Energy Act, the NRC will close out these concerns with the concerned individual.

The Program continues to be sensitive to issues of identity protection regarding alleged and is able to protect alleged identities.

Significant events and generic implications.

The Division indicated during the period reviewed they did not have any significant events or any events with generic implications.

Current State Initiatives.

- The Division has developed and is implementing a program to capture the knowledge retained by their qualified long term staff to ensure the program is not negatively impacted as individuals approach retirement.
- The Department has developed and implemented a leadership development program in which candidates are identified by management, and mentored. Candidates must complete assigned class work and work on a team project.

Emerging Technologies.

The Division reported that new emerging technologies they are actively working with include:

- The use of Radium Di-chloride.

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

The Division reported the following as examples of large and complicated authorizations:

- Waste disposal License (Cavanaugh Services) terminated in 2012, per the request of the licensee. This licensee was a waste transportation broker working with EnergySolutions. They received a license to market their company but did not use it, so the Division terminated the license. The Division reviewed the conveyance staging areas, performed surveys, processed financial assurance instruments and allowed for a public comment period.

State's mechanisms to evaluate performance.

The Division reported the following as examples of how they evaluate program performance:

- Inspector accompaniments are performed to ensure they are performing at the expected level.
- Peer reviews are being performed.
- The Legislative Auditor General conducted a performance audit of the Division with respect to its regulation and oversight of the EnergySolutions Clive facility. The majority of the audit recommendations focused on pre-disposal activities. The audit report's eight recommendations are being acted upon by the Division.

Current NRC initiatives:

The following NRC initiatives were discussed with the Division:

- NRC management changes
- Status of Part 37
- Updates on the NUREG 1556 series revisions
- FSME letters recently released
- RCPD letters recently released
- Updates on training class status
- Wyoming's interest in potentially becoming an Agreement State
- Discussion of Borehole Mining – Is this mining or milling?
- Phosphate Mining

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held on schedule in July 2015.