



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Radiation Control Bureau
1190 St. Francis Drive P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 476-3236
Fax (505) 476-3232



PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

August 17, 2001

Paul H. Lohaus, Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**RE: On-Site IMPEP Review-New Mexico, June 18-22, 2001,
State Program Response to Draft Report.**

Dear Mr. Lohaus:

This letter contains the response of the Radiation Control Bureau (RCB) of the New Mexico Environment Department (Department) to the IMPEP team's preliminary findings of program adequacy and compatibility for consideration by the Management Review Board. The RCB appreciates NRC'S comments and recommendations pertaining to improvements in the New Mexico materials program. The implementation of the NRC's recommendations made pursuant to the IMPEP Review in July 1997 have resulted in improvement to this program.

Following are the Department's responses keyed to the review team's findings and recommendations.

1. The team recommends that the program submit copies of the three rules adopted in 1997 but not submitted for review by NRC, and copies of license conditions used as legally binding alternatives to rulemaking, for evaluation by NRC following STP procedure SA-201.

1. Response: The RCB has not yet adopted the complete rules pertaining to "Performance Requirements for Radiography Equipment," 10 CFR Part 34 amendment (60 FR 28323) that became effective June 30, 1995; the rule pertaining to "Resolution of the Radioactive Materials; Clean Air Act;" 10 CFR Part 20 amendment (61 FR 65119) that became effective January 9, 1997; or the rule pertaining to "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State," 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.

SP01

Mr. Lohaus, Director
August 17, 2001
Page 2

On August 1, 2001, the RCB provided the NRC with the Department's proposed rules pertaining to "Performance Requirements for Radiography Equipment." These proposed rules have been placed on the agenda for consideration by the New Mexico Radiation Technical Council (RTAC), at their September 14, 2001, meeting. These proposed rules will hopefully be approved by the RTAC, go before the Environmental Improvement Board (EIB) for public hearing, and become effective before the end of the calendar year. The RCB adopted the equivalent of NRC's 34.20 (a) in May 1995. In the absence of rule adoption for the NRC's 34.20 (a) 2 and 34.20 (e), the RCB has used the following license conditions to address these requirements:

- A. Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing of similar individual radiography components. Upon review, the Department may find this an acceptable alternative to actual testing of the component pursuant to the referenced standard.
- B. Equipment used in industrial radiographic operations need not comply with Section 8.9.2 (c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

The rule pertaining to the "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act" will be adopted no later than Spring 2002. The RCB currently regulates no licensee which would fall under this rule.

The RCB will likewise adopt the rule pertaining to "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State" no later than Spring 2002.

- 2. An overdue rule is "Deliberate Misconduct by Unlicensed Persons," 10 CFR Parts 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) that became effective February 12, 1998.

2. Response: The overdue rule "Deliberate Misconduct by Unlicensed Persons," 10 CFR Part 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 63 FR 13773) has been determined by the Department's Office of General Counsel to be covered by existing statutory provisions. The Department has

Mr. Lohaus, Director
August 17, 2001
Page 3

the authority to bring criminal penalties or civil actions against any person violating Department regulations (see attached statute, Environmental Improvement Act).

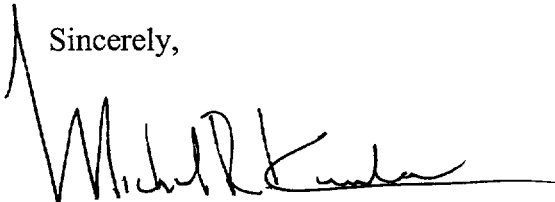
3. An overdue rule is "Exempt Distribution of Radioactive Drug Containing One Microcurie of Carbon-14 Urea," 10 CFR Part 30 amendment (62 FR 63634) that became effective January 2, 1998.

3. Response: Although one medical licensee made an initial inquiry about using one microcurie of carbon-14 urea in testing for the active presence of Helicobacter pylori, the Department is unaware of any individual or facility that has ever utilized this method of detection. This one inquiry was addressed by explaining to the individual that no license is required for in vivo diagnostic use of this radioisotope.

The Department and the RCB wish to assure NRC that work has begun on bringing state radiation protection regulations into full compatibility with NRC requirements, and that full compatibility should be attained by Spring 2002.

Please contact the RCB should you require further assistance or information.

Sincerely,



Mike Koranda, Director
Field Operations Division
New Mexico Environment Department

Enc.

- c.c. Richard Blanton, Office of State and Tribal Programs, U.S. NRC
Linda McLean, State Agreements Program, U.S. NRC, Region IV
Peter Maggiore, Cabinet Secretary, New Mexico Environment Department

any person who is or may be affected by a regulation adopted by the environmental improvement board a right of appeal to the court of appeals, if a company is such a person where it maintains septic systems, each with capacities within the scope of the liquid waste disposal regulations adopted pursuant to 74-1-8A(3) NMSA 1978. *Climax Co. v. New Mexico Env'tl. Imp. Bd.*, 106 N.M. 179 P.2d 132 (Ct. App. 1987).

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L.J. 106 (1973).

For comment, "Delegation of Legislative Authority on the State Level; Environmental Protection in New Mexico: Public Service Co. of New Mexico et al. v. New Mexico Environmental Improvement Board," see 17 Nat. Resources J. 521 (1977).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 4.

39A C.J.S. Health and Environment §§ 138, 142, 145.

74-1-10. Penalty.

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (2) or (3) of Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period and assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars (\$1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars (\$100) for each violation. A penalty imposed for violation of drinking water regulations 20 NMAC 7.1 or permit conditions shall not exceed one thousand dollars (\$1,000) per violation per day. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If a violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars (\$1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to be credited to the general fund.

H. Penalties collected pursuant to violations of drinking water regulations 20 NMAC 7.1 or permit conditions pursuant to Paragraph (2) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to the credit of the water conservation fund.