

To: Lohaus, STP



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

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MILTON H. HAMILTON, JR.
COMMISSIONER

March 15, 2002

Carl J. Paperiello
Deputy Executive Director for
Materials, Research and State Programs
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike, 3rd Floor
Rockville, MD 20852

Dear Mr. Paperiello:

This letter is in response to your letter dated February 5, 2002, which transmitted the Final Report on the NRC's 2001 IMPEP Follow-up Review. In that letter you requested our evaluation and response to the review team's recommendations to the State of Tennessee. You also requested an outline of the actions and expected dates of operation of the program without a significant inspection backlog and the schedule for adoption of regulations needed for compatibility and adequacy. We offer the following comments to the recommendations which are found beginning on page 13 of the report:

Recommendation 1

"The review team recommends the Division take actions to ensure that:

(1) inspections are conducted in accordance with their assigned frequencies;..."

Tennessee DRH wishes to reaffirm that its position on this matter is as expressed in a January 4, 2002, letter from Mr. Nanney to Mr. Lohaus. DRH believes that it has taken appropriate actions and made substantial progress in reducing the number of inspections overdue, and the number of months by which overdue, in a manner commensurate with the health and safety risk potentials associated with the licensed activities, and consistent with the accepted Program Improvement Plan. DRH acknowledges that it understands the NRC's position on this matter, as expressed during the Management Review Board (MRB) meeting on January 22, 2002, and affirmed by the MRB's acceptance of this Final Report. With this understanding, DRH will track statistics on inspection timeliness in a manner which will allow it to determine its status, on a periodic basis,

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with regard to the disputed criterion (percent of inspections overdue when performed). DRH will be prepared to provide and discuss those statistics with the NRC during the quarterly teleconferences to be conducted with the Regional State Agreements Officer.

DRH has within the last month had two positions released from the hiring freeze. These positions have been filled with experienced radioactive material license inspectors (rehires of former DRH inspectors), both of which are fully qualified to inspect Priority 1 licensees. One of those positions was filled on March 1, 2002, in the Knoxville EAC, which has the highest concentration of Priority 1 licenses in the State. The other inspector will begin May 1, 2002, in the Nashville EAC. This region has been understaffed in license inspectors. These additions to staff are expected to contribute greatly to the inspection program. DRH can only hope that they are not soon offset by losses of a type which have become altogether too familiar. Add to that the constraining criterion (reduction of the percentage of inspections, performed on an overdue basis, below 10% for a period of at least one year) which the NRC has posited for closure of Recommendation 1, Item 1, and the prediction of when that will occur presumes crystal ball proficiency. DRH has set a realistic goal of being able to demonstrate progress, on a periodic basis, in reducing the inspection backlog and improving timeliness of inspections. DRH expects that this recommendation will be closed during the next IMPEP review.

"...(2) inspection reports are issued in a timely manner."

As was noted in the Final Report, only one EAC experienced a problem in the issuance of timely inspection reports. The conclusion stated in the report was that this may have resulted from a lack of adequate trained staff. DRH is evaluating whether that is the primary causative factor, or whether other factors may have played major roles. That and other factors, such as priorities given to various work responsibilities, will be considered and management decisions made to address this unacceptable situation.

When acceptance testing of the upgraded DRH tracking information system is complete and that system is operational on a real-time basis, management oversight requirements should be diminished. Until then, extra diligence with existing management tools will be exercised where report timeliness problems are demonstrated.

Recommendation 3 (revised)

"The review team recommends that the Division ensure that inspection findings are fully supported in documentation of the inspection and that cited violations are fully supported in the inspection report..." (Section 3.2 of 2000 report)

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Please refer again to the letter dated January 4, 2002, from Mr. Nanney to Mr. Lohaus. In that letter, DRH provided specific comments on five items in the inspection casework review and accompaniment documentation (Appendix E of the Draft Final Report). Of the five items commented on, the NRC subsequently dropped three of those items from Appendix E of the Final Report. This left the Final Report without supporting documentation for the statement (which remained in the report, on page 7) that, "Two other NONs identified citations against the license's 'tie-down' condition and lacked specific information about how the requirement was violated."

Also, on page 7 of the Final Report is found the statement, "An NON issued for several violations was not supported by the associated inspection report which did not contain the inspector's basis for the violations, nor a discussion of the inspector's review of the program areas in which these violations were identified." Review by DRH of the casework files in Appendix E of the Final Report failed to identify any documentation supporting that conclusion.

DRH is sensitive to the underlying issue, and recognizes that there is and will probably always be room for improvement in documentation and citation construction, and for differences of professional opinion as well. DRH is committed to maintaining its effort to identify weaknesses when they occur and to rectify them. It is worth pointing out again that the NRC's conclusions described, for the most part, actions that the reviewer thought could or should be handled in a different way, rather than actions not conforming with DRH I&E policy and procedures. DRH has argued its case with limited success thus far, however, the fact that the NRC's own conclusions lack supporting documentation constitutes powerful evidence that it is time for this part of Recommendation 3 to be closed.

"...The review team also recommends that in order to enhance both the quality and documentation of inspections, the Division establish and implement additional guidance for ensuring consistent, appropriate, and prompt regulatory actions including incorporating root cause identification, especially of repeat violations." (Section 2.2 of follow-up report).

During the MRB meeting, DRH made it a point to emphasize the importance of providing clarity and specificity to the free-form discussion which evolved around the proposal, which is culminated in Section 2.2 of the Final Report and in this recommendation item, to expand Recommendation 3. The intent was and is to avoid any misunderstanding or miscommunication such as occurred relative to certain expectations during the heightened oversight period. Having now read the revised recommendation in the Final Report, DRH is uncertain of the intended scope of this recommendation, and offers the following views for the purpose of discussion and clarification.

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Section 2.2 did not distinguish in its discussion format what the NRC considered to be new issues within that section of the follow-up report, as distinguished from 3.3 of the 2000 report. A number of issues have been discussed with NRC staff, over a long period of time, which are likely topics to fit under this part of Recommendation 3 (revised). A listing of those topics might include (1) adjustment of inspection frequency based on licensee performance; (2) inclusion of statements of increased regulatory concern in NONs, resulting from the existence of either numerous or repeat violations; (3) routine identification of the severity level of violations, prior to its use in escalated enforcement actions; supplemental guidance for handling (4) repeat violations and (5) escalated enforcement; and (6) determination of root causes of violations.

The NRC has offered, and DRH welcomes, suggestions for improvement. DRH has indicated its interest in further evaluating the way the NRC utilizes the above concepts in its I&E activities. As an example, DRH will be sending nine staff members, including several managers, to the NRC's Root Cause Analysis course in July 2002. Agreement State programs are not bound, however, to duplicate the NRC regulatory process in every detail, and many of the differences referenced are attributable to the fact that TN DRH is a mature Agreement State program rather than an NRC Regional Office. Some of the drivers which have dictated changes in the NRC regulatory process are not operative in the State of Tennessee, and DRH may not wish to incorporate all the concepts it has expressed an interest in evaluating. DRH will continue to consult with its Office of General Counsel to ensure that its regulatory process remains consistent with the legal framework of the State of Tennessee. It is the intent of DRH to incorporate those aspects of the NRC regulatory process which are useful and make sense in terms of local needs and available resources. DRH requests that the NRC assist in its deliberations concerning possible adoption of these concepts by forwarding applicable documents, or by identifying where they may be obtained.

Followup Recommendation 1

"The review team recommends that the Division establish a management plan for the development, tracking, and adoption of regulations in a timely manner..."

Staff from the Technical Services section and the Director's Office have begun development of a "Regulation Adoption Procedures" manual. This manual (plan) is scheduled to be completed by May 31, 2002.

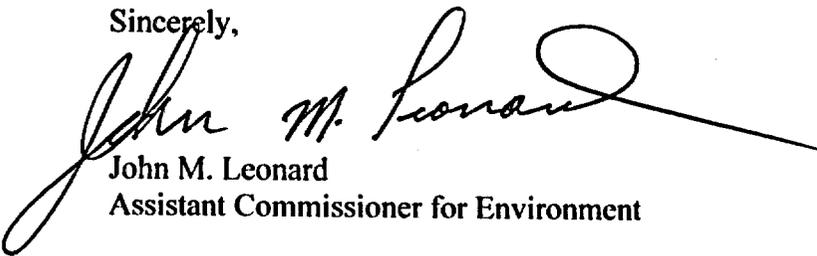
"...and to adopt the current regulations needed for adequacy and compatibility in accordance with the STP Procedure SA-201, "Review of State Regulations or Other Generic Legally Binding Requirements."

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The staff of the Tennessee DRH and I wish to thank the members of the IMPEP follow-up review team and the MRB, as well as other involved NRC staff members, whose observations and suggestions assisted DRH in making program refinements resulting in improved performance ratings. Special thanks are also due the staff of DRH who worked diligently to bring about these achievements.

I too look forward to our agencies continuing to work together in a cooperative spirit in the future.

Sincerely,



John M. Leonard
Assistant Commissioner for Environment

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cc: Milton H. Hamilton, Jr.
Commissioner, Environment & Conservation

Lawrence E. Nanney
Director, Division of Radiological Health

Regulations reviewed by the NRC as part of the follow-up review are effective as of February 4, 2002.

Corrections indicated as necessary by the NRC in the letter from Josephine Piccone dated February 1, 2002, will be included in the next rulemaking. This will include the training and testing requirements for the radiation safety officer for industrial radiography (for compatibility with 10 CFR 34.42(a)).

There were five regulations identified in the Final Report as needed for compatibility and/or adequacy:

(1) "Quality Management Program and Misadministrations"

This regulation is currently on hold pending NRC changes to Part 35, and the IMPEP team has concurred that this action is appropriate.

(2) "Clarification of Decommissioning Funding Requirements"

(3) "Termination or Transfer of Licensed Activities: Recordkeeping Requirements"

(4) "Radiological Criteria for License Termination"

DRH has addressed the essential objectives of the noted regulations with requirements that are at least as restrictive as those in 10 CFR. The provisions in "Radiological Criteria for License Termination" which were designated as A or B for compatibility were addressed in the rulemaking the NRC has already reviewed.

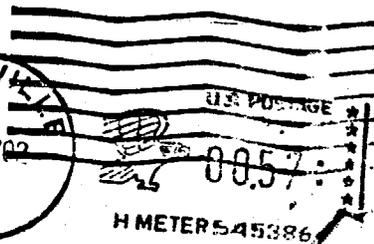
(5) "Minor Corrections, Clarifying Changes, and a Minor Policy Change"

This will be included in the next rulemaking.

The four regulations identified in the Final Report as needed in the future are in process. One of these, the "Requirements for Certain Generally Licensed Devices Containing Byproduct Material," was addressed through license amendment. All four will be included in the next rulemaking.

The next rulemaking is in progress. DRH intends to begin formal promulgation of this rulemaking by submitting a notice of public hearing in the May issue of the Tennessee Administrative Register, and DRH will provide a copy for NRC review at the same time.

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