

September 2, 2004

MEMORANDUM TO: Management Review Board Members:

Martin J. Virgilio, EDO
Paul H. Lohaus, STP
Joseph R. Gray, OGC
Margaret Federline, NMSS

FROM: Osiris Siurano, Health Physicist */RA/*
Office of State and Tribal Programs

SUBJECT: MINUTES: JULY 28, 2004 CALIFORNIA MRB MEETING

Attached are the minutes of the Management Review Board (MRB) meeting held on July 28, 2004. If you have comments or questions, please contact me at 415-2307.

Attachment:
As stated

cc: Edgar Bailey, CA
Clayton Bradt, NYS DOL, OAS Liaison

MINUTES: MANAGEMENT REVIEW BOARD MEETING OF JULY 28, 2004

These minutes are presented in the same general order as the items were discussed in the meeting. The attendees were as follows:

Martin Virgilio, MRB Chair
Joseph Gray, MRB Member, OGC
James Lynch, Team Leader, NRC RIII
Andrew Mauer, Team Member, STP
Josephine Piccone, STP
Aaron McCraw, STP
Lance Rakovan, EDO
Patricia Larkins, STP
Larry Barrett, CA
David McIntyre, OPA

Paul Lohaus, MRB Member, STP
Margaret Federline, MRB Member, NMSS
Linda McLean, NRC, RIV
David Fogle, Team Member, TX
Kathleen Schneider, STP
Richard Struckmeyer, NMSS
Isabelle Schoenfeld, EDO
Brenda Usilton, STP
Edgar Bailey, CA
Osiris Siurano, STP

By videoconference:

Hector Bermudez, Team Member, NRC RII
Kevin Reilly, CA
Victor Anderson, CA
Mark Satorius, NRC RIV

Richard Jackson, CA
James Ladell, CA
Gary Butner, CA
Charles Cain, NRC RIV

By teleconference:

Clayton Bradt, OAS Liaison, NYS DOL

Kim Wiebeck, Team Member, AR

1. **Convention.** Mr. Martin Virgilio, Chair of the Management Review Board (MRB) convened the meeting at 2:01 p.m. He summarized the meeting's proceedings. Introductions of the attendees were conducted.
2. **California IMPEP Review.** Mr. James Lynch, Regional State Agreements Officer, NRC Region III, led the Integrated Materials Performance Evaluation Program (IMPEP) team for the California IMPEP review.

Mr. Lynch summarized the review and noted the findings. Preliminary work included a review of California's response to the IMPEP questionnaire. Inspector accompaniments were performed during late 2003 and early 2004. The on-site review was conducted April 26-30, 2004 and included an entrance interview, review of applicable California statutes and regulations, analysis of quantitative information from the State's licensing and inspection data base, technical evaluation of selected licensing and inspection actions, and interviews with staff and management to answer questions or clarify issues. The team issued a draft report on May 28, 2004; received California's comment letter dated July 1, 2004; and submitted a proposed final report to the MRB on July 21, 2004. He noted that three of four recommendations from the October 1999 IMPEP were closed. However, one recommendation from the 1996 IMPEP review will be reopened. This recommendation was closed at the 1999 IMPEP but corrective actions have not been completed.

Common Performance Indicators. Mr. Lynch presented the findings regarding the common performance indicator, Technical Staffing and Training. His presentation corresponded to Section 3.1 of the proposed final IMPEP report. The team found California's performance with respect to this indicator to be "satisfactory, but needs improvement" and made one recommendation. The team recommended that the State ensure that adequate resources, both funding and staffing, be devoted to the radiation control program, and that the State's fee system be updated to reflect actual program costs. A discussion on the program's funding was held. The State noted that corrective actions are being taken to address the staffing and funding issues. The State informed the MRB that the hiring freeze was lifted on July 1, 2004. In addition, if compared to last year's budget, the Radiologic Health Branch's (the Branch) budget for fiscal year 2004-2005 has been increased, and fees are being revised and increased. The use of administrative (monetary) penalties was also discussed. California management noted that the Branch is appealing the loss of positions that were vacant before the hiring freeze, and is also requesting additional positions. A discussion on a good practice identified at the 1999 IMPEP was held. The Quality Assessment (QA) Unit, established within the Branch's Inspection, Compliance and Enforcement Section (ICE), was abolished during the review period. Mr. Edgar Bailey noted that, despite the abolition of these positions, QA is still performed although not as often as it used to be. The MRB directed that the report be modified to reflect that, although the QA Unit positions were abolished, the ICE still performs QA to a lower extent. The MRB agreed that California's performance met the standard for a "satisfactory, but needs improvement" rating for this indicator.

Mr. Hector Bermudez presented the findings regarding the common performance indicator, Status of Materials Inspection Program. His presentation corresponded to Section 3.2 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory" and made two recommendations. The review team recommended that the Branch enhance its ability to account for the whereabouts and security of licensed materials known to have existed under a license, and that the Branch implement procedures to ensure inspection findings are issued to licensees within 30 days of the completion of routine inspections. On May 6, 2004, the NRC provided the State early written notification of the need to account for licensed materials, given its significance. California management indicated that on July 8, 2004 it responded to this notification and is working to address this issue. The MRB directed that this correspondence be included in the final report. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Bermudez presented the findings regarding the common performance indicator, Technical Quality of Inspections. His presentation corresponded to Section 3.3 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory" and made no recommendations. A short discussion on inspector accompaniments was held. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Ms. Kim Wiebeck presented the findings regarding the common performance indicator, Technical Quality of Licensing Actions. Her presentation corresponded to Section 3.4 of

the proposed final IMPEP report. The team found California's performance with respect to this indicator to be "satisfactory" and made one recommendation. The review team recommended that the incident and allegation history of a licensee be reviewed during evaluation of licensing actions. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Andrew Mauer presented the findings regarding the common performance indicator, Technical Quality of Incident and Allegation Activities. His presentation corresponded to Section 3.5 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory, but needs improvement" and made two recommendations. The review team recommended that the Branch, in coordination with the Idaho National Engineering and Environmental Laboratory, complete and close all reportable incidents in the Nuclear Materials Events Database, and that the Branch establish and implement a system to track incident and allegation investigations to ensure timeliness, proper documentation, appropriate follow up, and closure. A discussion on the root causes for the State's delay on reporting and lack of closing information for incidents was held. The compatibility issue regarding California's requirement for misadministrations involving more than 30 microcuries of iodine-131 and iodine-125 was discussed. The State's regulation is less restrictive, and therefore, not compatible with NRC's. The MRB agreed that California's performance met the standard for a "satisfactory, but needs improvement" rating for this indicator.

Non-Common Performance Indicators. Ms. Linda McLean led the discussion of the non-common performance indicator, Compatibility Requirements. Her discussion corresponds to Section 4.1 of the proposed final IMPEP report. The team found California's performance to be "unsatisfactory" and made one recommendation. The review team recommended that the Branch develop and implement an action plan to adopt NRC regulations in accordance with current NRC policy on adequacy and compatibility. The MRB agreed that California's performance met the standard for an "unsatisfactory" rating for this indicator.

Mr. David Fogle led the discussion of the non-common performance indicator, Sealed Source and Device Evaluation Program. His discussion corresponds to Section 4.2 of the proposed final IMPEP report. The team found California's performance to be "satisfactory" for this indicator and made a recommendation that the Branch formally establish and implement: (1) a process to notify the SS&D evaluation program of all defects and incidents involving California administered SS&D sheets; and (2) a procedure for the SS&D evaluation program to investigate reports of defects and incidents for root cause and generic implications for possible subsequent reevaluation of SS&D sheets. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

MRB Consultation/Comments on Issuance of Report. Mr. Lynch concluded, based on the discussion and direction of the MRB, that the California Program was rated "satisfactory" for the common performance indicators: Status of Materials Inspection Program, Technical Quality of Inspections, Technical Quality of Licensing Actions and the non-common performance indicator Sealed Source and Device Evaluation Program. The California Program was rated "satisfactory, but needs improvement" for the

common indicators: Technical Staffing and Training and Technical Quality of Incident and Allegation Activities. The California Program was rated “unsatisfactory” for the non-common performance indicator: Compatibility Requirements. The MRB found the California Agreement State Program to be adequate, but needs improvement and not compatible with NRC's program. The review team recommended that a period of heightened oversight be implemented to assess the progress of the State, including preparation of a program improvement plan, bimonthly conference calls, status reports before each call, and a follow-up IMPEP review in one year. A discussion on responsibilities of the State, NRC, and expectations during the period of heightened oversight was held. The MRB agreed with the review team’s recommendations.

Comments. Mr. Lynch thanked the review team for their job and commitment to complete their task. He thanked the State for their cooperation during the review. Mr. Fogle and Ms. Wiebeck expressed thanks for the opportunity of being part of the review team. The State representatives thanked the team and the MRB for their professionalism and cooperation and expressed their commitment to work in restoring the Program back to a higher level of performance. The MRB thanked the IMPEP review team and California for their efforts.

3. **Status of Current and Upcoming Reviews.** Ms. Kathleen Schneider briefly commented that the State of California will be included in the Heightened Oversight and Monitoring Chart. She also informed the MRB that the Kansas quarterly call was postponed until August 2004 and that the Kentucky IMPEP review was completed on July 23, 2004. She noted that Tennessee’s response to the recommendations contained in their final IMPEP review report was received by letter dated July 14, 2004 and that the North Carolina and Georgia IMPEP reviews will be performed in August 2004.
4. **Precedents/Lessons Learned.** No precedents that will be applied to the IMPEP process in the future were established by the MRB during this review.
5. **Good Practices.** No good practices were identified during this review.
6. **Adjournment.** The meeting was adjourned at approximately 4:23 p.m.