

December 9, 2004

Ms. Alice Bruning, Chief  
Bureau of Prevention Services  
Division of Public Health Services  
Department of Health and Human Services  
29 Hazen Drive  
Concord, NH 03301-6504

Dear Ms. Bruning:

Thank you for your November 15, 2004 letter that summarizes the program progress achieved since the June 2004 New Hampshire Integrated Materials Performance Evaluation Program (IMPEP) review and includes a revised Program Improvement Plan (Plan) and a November 2004 Status Report on U.S. Nuclear Regulatory Commission (NRC) regulations required for compatibility. We appreciate the efforts you and your staff have taken to address the results of the IMPEP review. These efforts were discussed during the heightened oversight conference call on November 23, 2004. Draft minutes from this call are attached to this letter.

Based on our review of your plan, and discussion during the heightened oversight conference call, we are concerned that the Plan does not include specific completion dates for each overdue regulation, or intermediate milestones to track progress. I would like to again request that the Plan identify specific success metrics (i.e., key milestones, measures and results) for each overdue regulation. Milestones, if met, would help ensure that adequate progress is being made to bring to closure the promulgation of overdue regulations. Similarly, if the milestones are not met, it would provide an early opportunity to assess and direct additional actions necessary to help achieve success. We are also concerned that, given the steps in the rule promulgation process that occur outside of your organization, that you have not identified in the Plan other alternative options for a more expeditious adoption of these amendments (i.e. adoption by license conditions and/or by reference), that may not be influenced by factors outside of your organization.

I would also like to emphasize that achieving the June 2005 target date for having all currently overdue regulations in place, and those which will become overdue in the Spring of 2005, is highly important in helping provide a basis for consideration to remove the New Hampshire program from heightened oversight. Therefore, I request that your plan be amended to include specific success metrics, (i.e., key milestones, measures and results), address alternative options that you decide to use, and be submitted to me within 30 days of the date of this letter.

I want to assure you that the Commission supports the objectives of the New Hampshire Agreement State Program and that NRC staff will continue to work closely with your Program. We are prepared to assist you in interactions with other New Hampshire organizations which share responsibilities for rule promulgation, to help ensure that established milestones for the completion of overdue regulations are met. If you believe we could assist in helping obtain their commitment to meet established schedules, please let us know. Thank you for your

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commitment to this effort. Please provide me with any comments you have on the attached draft minutes for the November 25, 2005 conference call within two weeks of the date of this letter.

If you have any questions, please do not hesitate to contact me at 301-415-3340.

Sincerely,

*/RA/*

Paul H. Lohaus, Director  
Office of State and Tribal Programs

Enclosure:  
As stated

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Regional Administrator, RI

J. T. Wiggins  
Deputy Regional Administrator, RI

Mike Broderick, Oklahoma  
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NAME	John Zabko:kk		SMinnick		JMPiccone		PHLohaus		
DATE	11/23/04 12/8/04		12/2/04 (via email)		12/8/04		12/9/04		

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## CONFERENCE CALL SUMMARY WITH NEW HAMPSHIRE

DATE OF CALL: November 23, 2004

### ATTENDEES:

Duncan White, Region I  
Sheri Minnick, Region I  
John Zabko, STP  
Kevin Hsueh, STP  
Alice Bruning, NH  
Dennis O'Dowd, NH

### BACKGROUND:

Subsequent to the June 2004 New Hampshire Integrated Materials Performance Evaluation Program (IMPEP), the Management Review Board requested bimonthly conference calls be conducted between the appropriate New Hampshire and NRC staffs to discuss the State's performance with regard to technical staffing and training and promulgation of regulations. This is the first conference call since the IMPEP review.

Ms. Bruning provided a Summary Letter dated November 15, 2004, that summarized the Bureau's progress achieved since the IMPEP review and included a revised Program Improvement Plan (Plan) and a November 2004 Status Report on NRC regulations required for compatibility.

### SUMMARY LETTER AND PROGRAM IMPROVEMENT PLAN DISCUSSIONS:

Mr. O'Dowd reviewed the status of technical staffing and training. The Radiological Health Bureau (Bureau) is focusing on getting two individuals trained to independently perform inspections. They expect to have Debanond Chakraborty and Rick D'Alarcao qualified to perform all Priority 5 inspections (accounts for approximately 75% of inspections) by the end of December. In addition, Asish Banerjee is expected to become qualified to review sealed source and device licenses by mid-December. The Bureau has worked with the Radiation Control Programs of Maine and Massachusetts in order to obtain licensing experience and inspection accompaniments needed for these individuals.

The Bureau has had both licensing and inspection work for the materials program performed by contract personnel in the past. These contracts are not currently in place, however they are pursuing contracts with two individuals, and they are expected to be in place by mid-December. The Bureau has no overdue inspections.

Ms. Bruning explained that they have interviewed one candidate and are considering interviewing a second individual to fill the vacant Radiological Health Administrator position.

The following regulations were adopted by the Bureau: Energy Compensation Sources for Well Logging and Other Regulatory Clarifications, and Radiation Safety Requirements for Irradiators. The final regulations went into effect on November 22, 2004. In addition, the Bureau adopted the NRC amendment for New Dosimetry Technology through legally binding license conditions in September 2004. The Bureau expects to have all overdue regulations completed within the next six months.

NRC staff requested additional milestones be added to the Plan in order to closely monitor the Bureau's progress with regard to adoption of overdue regulations. Ms. Bruning explained that she was not comfortable with listing arbitrary milestone dates that she does not have control over. Ms. Bruning explained that once drafted, the rule packages go through a rule revision process that may impede them from meeting such milestones. NRC staff explained the importance of milestones for the tracking of the overall success of the State's Plan and the importance of completing the overdue regulations towards the removal of the Bureau from Heightened Oversight. In addition, NRC staff explained the options that were available to the State to promulgate rules in a more expeditious manner including adoption by reference and through the use of license conditions. As well, NRC staff offered the assistance from the NRC's Office of State and Tribal Programs, Agreement State Program Regulation Project Manager, in the form of Summary of Change documents for each of the States's overdue rules and technical assistance with the compatibility components of the NRC's rules.

Mr. Zabko requested that the regulation tracking portion of the New Hampshire Plan be revised to document the State's progress since the IMPEP, (i.e., final rules adopted in the State), the prioritization of the work on the regulations that remain overdue, the projected date that the Bureau will complete work on drafting rule language for each overdue regulation.

Mr. Hsueh pointed out that in addition to the current overdue regulations, the NRC amendments for Revision of the Skin Dose Limit and Medical Use of Byproduct Material are due for adoption by the Agreement States in the Spring of 2005. Mr. Hsueh indicated that these two amendments should also be adopted along with the overdue regulations before the next IMPEP.

Ms. Bruning agreed to provide an amended plan that would more clearly document the status of the New Hampshire regulations in the Plan and also the prioritization of the work yet to be completed before the next Heightened Oversight call. Ms. Bruning reiterated that the external review of the rule packages, and delays caused by those reviews, were out of the control of the Bureau.

NEXT CALL:

The next call is scheduled for January 25, 2005 at 1:30 p.m.