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NUCLEAR REGULATORY COMMISSION
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October 7, 1998

Ed Kelley, Ph.D.
Director, Water and Waste Management Division
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, NM 87502

Dear Dr. Kelley:

On September 28, 1998 the Management Review Board (MRB) met to consider the proposed final report documenting the Integrated Materials Performance Evaluation Program (IMPEP) follow-up review on the New Mexico Agreement State Program. The MRB found the New Mexico program adequate to protect public health and safety and compatible with NRC's program. The MRB acknowledged New Mexico's efforts to significantly strengthen their program over the past year.

Section 5.0, page 19, of the enclosed final report presents the IMPEP team's recommendation. Based on the results of the current IMPEP review, the next full review will be scheduled in three years.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review and your support of the Radiation Control Program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

Hugh L. Thompson, Jr.
Deputy Executive Director
for Regulatory Programs

Enclosure:
As stated

cc: Benito Garcia, Chief
Bureau of Hazardous and Radioactive Materials
Water and Waste Management Division
New Mexico Environment Department

William Floyd
Bureau of Hazardous and Radioactive Material
Water and Waste Management Division

Richard Ratliff, Organization of Agreement States
Liaison to MRB

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bcc: Chairman Jackson
Commissioner Diaz
Commissioner McGaffigan

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
FOLLOW-UP REVIEW OF NEW MEXICO AGREEMENT STATE PROGRAM

JULY 7-10, 1998

FINAL REPORT

U. S. Nuclear Regulatory Commission

ENCLOSURE 1

1.0 **INTRODUCTION**

This report presents the results of the follow-up review of the New Mexico radiation control program conducted July 7-10, 1998. The follow-up review was conducted by a review team comprised of technical staff members from the Nuclear Regulatory Commission (NRC). Team members are identified in Appendix A. The follow-up review was conducted in accordance with the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," published in the Federal Register on September 3, 1997 (62 FR 46517), and the November 25, 1997, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." The follow-up review covered the State's response to, and resolution of, 29 recommendations and suggestions made during the July 14-18, 1997 IMPEP review. The follow-up review covered the status of the program since the 1997 review. Preliminary results were discussed with New Mexico management on July 10, 1998.

A draft of this report was issued to New Mexico for factual comment on August 6, 1998. The State responded in a letter dated August 18, 1998 (Attachment 1). The State's factual comments have been incorporated into the final report. The Management Review Board (MRB) met on September 28, 1998, to consider the proposed final report. The MRB found the New Mexico radiation control program adequate to protect public health and safety and compatible with NRC's program.

The New Mexico Environment Department is the agency within the State of New Mexico that regulates, among other public health issues, radiation hazards. The New Mexico Environment Department Secretary is appointed by and reports to the Governor. Within the Environment Department, the radiation control program is administered by the Radiation Licensing and Registration Program (RLRP) under the direction of the Hazardous and Radioactive Materials Bureau (HRMB). The New Mexico Environment Department and HRMB organization charts are included as Appendix B. The New Mexico program regulates approximately 245 specific licenses, including a megacurie pool irradiator, manufacturers, broad academic programs, broad medical programs, nuclear pharmacies and industrial radiographers.

The primary intent of this follow-up review was to close out programmatic deficiencies identified during the 1997 IMPEP review. Although not specifically evaluated during this review, the team observed other evaluation criteria, under the various indicators, to ensure those portions of the radiation control program remained adequate since the last review.

The review team's general approach for conduct of the follow-up review included:
(1) evaluation of the State's implementation of their program improvement plan that was accepted by the MRB at the October 23 and December 11, 1997 MRB meetings; (2) the status of the program during the period of July 19, 1997 - July 10, 1998; (3) review of the status of applicable New Mexico statutes and regulations; (4) review of quantitative information from the radiation control program licensing and inspection database; (5) technical review of selected inspection, licensing and incident response program documentation for response to issues identified during the previous review; and (6) interviews with staff and management to answer questions or clarify issues. The team evaluated the information that it gathered against the IMPEP performance criteria for each common and non-common performance indicator and made a preliminary assessment of the radiation control program's performance.

2.0 STATUS OF PREVIOUS REVIEW

The previous routine IMPEP review, conducted on July 14-18, 1997, resulted in a finding for New Mexico that the radiation control program was “adequate to protect public health and safety but needs improvement, and compatible with NRC’s program.” Due to the significance and number of deficiencies found in the New Mexico program, which included a finding of unsatisfactory in one performance indicator, the review team recommended a period of probation for a duration to be established after consultation with the New Mexico radiation control program management.

The MRB met on October 23, 1997 to consider the proposed final report. At the time of the review, the IMPEP team found the State’s performance to be satisfactory for the indicators, Technical Quality of Licensing Actions and Legislation and Regulations Required for Compatibility; satisfactory with recommendations for improvement for the indicators, Status of Materials Inspection Program, Technical Quality of Inspections, and Technical Staffing and Training; and unsatisfactory for the indicator, Response to Incidents and Allegations. The review team recommended that the New Mexico program be found adequate, but needs improvement, and compatible. Because of the significance of the concerns, the team also recommended that New Mexico be placed on probation and noted that heightened oversight was warranted. During the MRB meeting, three main issues were identified that New Mexico should address in terms of programmatic improvements: (1) level of program staff and amount of resource support; (2) technical quality of staff and training needs; and (3) level of management support, involvement, and oversight of New Mexico Agreement program activities. The MRB found the New Mexico program adequate, but needs improvement, and compatible with the NRC’s program. The MRB concluded that it would be appropriate for NRC management to meet with upper management of the New Mexico program before the MRB voted on the recommendation for probation status for the program.

On December 4, 1997, Hugh L. Thompson, Jr., NRC Deputy Executive Director for Regulatory Programs and other NRC managers met with Secretary Mark Weidler, New Mexico Environment Department and his staff to discuss performance concerns associated with the New Mexico Agreement program.

On December 11, 1997, the MRB reconvened to discuss probation for the New Mexico program. Based on the New Mexico actions at the time of the meeting, and the commitments by Secretary Weidler, the MRB concluded probation was not warranted. Based on implementation of new procedures for response to incidents, the MRB directed the team to revise the finding for the common performance indicator, Response to Incidents and Allegations, to satisfactory with recommendations for improvement. The MRB directed that the follow-up review be conducted within one year of the IMPEP review, that monthly conference calls take place with New Mexico staff, and requested that written progress reports be submitted by the State every other month.

Monthly telephone conference calls, and one meeting at the Conference of Radiation Control Program Directors annual meeting, were held with New Mexico management and staff. The calls were effective in maintaining communication between NRC and New Mexico during the period of heightened oversight.

Three bi-monthly progress reports were submitted by New Mexico on January 21, March 27 and May 29, 1998. The reports chronicled the progress made by the State on the 29 recommendations and suggestions made during the 1997 review, including the hiring of two

staff, response to incidents, and improvements made to the inspection program. The progress reports may be found in Appendix C.

Results of the follow-up review of the State's response and resolution of the 29 recommendations and suggestions encompassing the IMPEP common and non-common performance indicators are presented in Sections 3 and 4, respectively. Section 5 summarizes the review team's findings and recommendations during the follow-up review.

3.0 COMMON PERFORMANCE INDICATORS

The IMPEP process uses five common performance indicators in reviewing both NRC Regional and Agreement State programs. These indicators are: (1) Status of Materials Inspection Program; (2) Technical Quality of Inspections; (3) Technical Staffing and Training; (4) Technical Quality of Licensing Actions; and (5) Response to Incidents and Allegations.

3.1 Status of Pending Issues Identified under "Status of Materials Inspection Program"

The review team focused on the four recommendations from the July 1997 IMPEP review. Each recommendation and its current status is addressed below. New Mexico's performance, with respect to this indicator, Status of Materials Inspection Program, was found to be satisfactory with recommendations for improvement during the 1997 review.

Recommendation

> The review team recommends that the nuclear pharmacy inspection frequency be modified from 2 years to 1 year.

Current Status

The State indicated, in its October 10, 1997 response to the draft review report, that the two-year inspection frequency for nuclear pharmacies was based on an out-dated copy of Inspection Manual Chapter (IMC) 2800 "Materials Inspection Program," which was believed to be current. The frequency was changed to 1 year immediately after identification by the team during the 1997 IMPEP review. IMCs are now centralized in a file maintained by a technical staff person. The review team verified that the State now inspects nuclear pharmacies on a one-year inspection frequency. The staff also has access to the NRC inspection manual via the NRC's website. All of New Mexico's inspection frequencies are now at least as frequent as NRC's.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that initial inspections of licensees be performed within 6 months of license issuance or within 6 months of the licensee's receipt of material and commencement of operations, consistent with IMC 2800.

Current Status

The review team evaluated the timing of initial inspections for six new licenses issued during the review period. All six were inspected within 6 months of issuance. The Program Manager maintains a tickler file for all new licenses issued by the Program. He personally calls licensees at two-month intervals to determine if radioactive material has been received. If so, he

schedules an inspection. If the licensee has not yet received licensed material, he updates the telephone log in the inspection file and schedules another call in 2 months. The Program Manager stated that, if licensed material was not received within 1 year, he would schedule an inspection regardless. This situation has not been encountered to date. Additionally, a standard license condition is added to new licenses instructing licensees to notify the Program within 10 days after receipt of radioactive material.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the tracking system be revised to allow initial inspections to be readily identified to staff and management.

Current Status

As discussed in the previous recommendation, the Program Manager tracks, in a hard copy tickler file, all new licenses issued. The Bureau Chief, who signs all new licenses, has also established a hard copy file in his office to track new license inspections. Both tracking files were observed during the follow-up review. The computer database has been completely revamped using a Microsoft Access-based program. Monthly reports are generated for Program managers to alert them of inspections which are due, including initial inspections. Since licenses are produced on the same database, the issuance dates on licenses are used to generate the inspection due date reports.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State increase the number of reciprocity inspections to better evaluate the health and safety implications of out-of-state companies working in New Mexico.

Current Status

Reciprocity inspections are now a priority for the New Mexico program. Since the review, greater than 75 percent of Priority 1 and approximately 50 percent of Priority 2 and 3 reciprocity licensees were inspected by the program. (Note: All New Mexico licensees are categorized as Priority 1, 2 or 3). In most cases the reciprocity inspections were unannounced. A log is maintained of all reciprocity requests with the date of inspection and the inspector's name or, if an inspection was not performed, the reason for the missed opportunity.

Some of the reciprocity inspections resulted in violations identified, including one out-of-state radiographer, where the New Mexico inspector identified significant health and safety concerns resulting from poor radiation safety practices by the licensee. New Mexico informed the Agreement State, which licenses the radiographer, of the violations identified during the reciprocity inspection.

Based on the follow-up review, the team considers this recommendation to be closed.

The primary intent of this follow-up review was to close out programmatic deficiencies identified during the 1997 IMPEP review. Although not specifically evaluated during this review, the team observed that other evaluation criteria, under this indicator, which were identified as satisfactory during the last review remained adequate and did not show deterioration. These areas include inspection backlog and inspection report timeliness.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Status of Materials Inspection Program, be upgraded to a finding of satisfactory.

3.2 Status of Pending Issues Identified under "Technical Quality of Inspections"

The review team focused on the seven recommendations and four suggestions from the 1997 IMPEP review. New Mexico's performance with respect to the indicator, Technical Quality of Inspections, was found to be satisfactory with recommendations for improvement during the 1997 review.

The review team evaluated casework for 12 inspections, including the following types of licenses: well logging, industrial radiography, medical, portable gauge, research and development, and nuclear pharmacy. There were no inspections of broad scope licensees during the review period.

Recommendation

> The review team recommends that the State inspectors attempt to observe licensee operations or demonstrations during all inspections.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that Program management has begun more frequent accompaniments of inspection staff and will continue doing so as new staff are hired. The "Standard Operating Procedures Manual for License Inspections" has been revised and a copy has been given to each staff member. The importance of performance-based inspections has been discussed at staff meetings and inspection forms have been finalized to reflect performance-based inspections. With the relocation of all but one inspector to a centralized location in Santa Fe, the Program Manager will now be able to discuss inspections with inspectors and more readily determine what was found during inspections and what additional areas need to be addressed. The inspector located in the Albuquerque office brings all inspection reports to Santa Fe at least weekly to discuss findings with the Program Manager as inspections are accomplished.

The review team verified that inspectors are now observing licensee activities during inspections and documenting such observations in the inspection report. The inspection report forms have been revised to include a section to document observation of activities, and list various activities to observe. The team also verified during staff interviews that all inspectors have copies of the "Standard Operating Procedures Manual for License Inspections" and have been instructed in all aspects of the manual.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State inspectors conduct independent measurements on all inspections.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that the staff has been advised of the importance of performing independent measurements during all inspections.

The review team found that independent measurements were routinely performed by the inspectors, and when independent measurements were not performed, inspectors provided an acceptable explanation in the inspection reports. The team verified, during staff interviews, that each inspector was aware of the importance of performing independent measurements as a part of the licensee evaluation process. The location of the independent measurements appeared appropriate for the type of licensed program.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State increase the rigor of reviewing technical health physics issues during inspections, and increase the breadth and scope of inspections.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that the inspection report forms and inspection guidance documents have been revised to reflect the importance of in-depth inspections. Weekly staff meetings are used to discuss the revised forms and guidance documents.

The review team found that the depth and scope of technical health physics reviews have improved since the last review. The inspectors evaluated programs in more detail, reviewing applicable technical issues related to the type of program, including such areas as surveys, storage and shielding of radioactive material, security, and dosimetry. Staff interviews identified that all inspectors have increased the technical rigor of their inspections. Training received by the staff since the last review has resulted in a greater knowledge of licensee operations,

resulting in more in-depth inspections. The inspection reports have also been revised to include more technical health physics issues.

Based on the follow-up review, the team considers this recommendation to be closed.

Suggestion

> The review team suggests that the State inspectors attempt to interview ancillary workers during inspections.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that staff have been reminded of the importance of interviewing ancillary workers during inspections. The staff was provided training in the regulations which pertain to consultation with workers during inspections.

The review team verified, during staff interviews, that all of the New Mexico inspectors routinely attempted to interview ancillary personnel during inspections. In some cases, this was not possible as the inspection was at a field site or was a reciprocity inspection, where no ancillary personnel were present. There were two inspection reports of medical facilities where interviews of ancillary personnel or a nurse were not documented, however, the inspectors indicated that they had interviewed these personnel. The Program Manager stated that he would encourage staff to ensure that all such discussions are documented in the inspection report.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Recommendation

> The review team recommends that the State inspectors attempt to conduct formal exit meetings with the senior licensee management on all inspections.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that the inspection forms and inspection guidance documents now indicate that the closeout conference should be held with the licensee's highest level of licensee management available and that inspectors should always contact upper management upon entering a facility. This issue has also been discussed at staff meetings.

The review team found that the inspection forms now include a section to note those present at the exit meeting or who was contacted. The review team found that inspectors were regularly exiting with a high level of licensee management. If licensee management officials were not available during an inspection, attempts were made to follow up with them after the inspection.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State develop a formal process for reviewing licensee responses to deficiency letters and closing open deficiencies.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that all responses will be tracked using a tickler file; the Program Manager and the Bureau Chief will sign off on the adequacy of licensee responses; and requests for additional information are now made in writing, with copies of all correspondence placed in license folders.

The review team found that staff have been made aware of the tickler file and the process for using the file. The inspection files contained complete documentation for follow up of violations, with the exception of one file, which was corrected during the review. Program management signs off on the adequacy of all licensee responses. The system appears adequate to evaluate and track licensee responses.

Based on the follow-up review, the team considers this recommendation to be closed.

Suggestion

> The review team suggests that the State develop a formal process for inspectors and license reviewers to document and transmit pertinent information to each other for follow up.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that weekly staff meetings are held to discuss the previous week's activities. Any need for documentation is satisfied in writing.

The review team found that the inspection forms include a section entitled "License Reviewer Alert Memo," which is used to address any licensing issues. Only one of the files reviewed raised issues requiring the use of this system. In this case, the system worked very well in communicating an inspection-identified issue to the license reviewer. A memorandum in the file thoroughly documented the licensing issue and the licensing action was completed appropriately.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Suggestion

> The review team suggests that the State develop a process for ensuring that inspection files are complete, that all appropriate State documents are prepared and filed, and that licensee responses are received and filed.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that each inspector will be held responsible for ensuring that all inspection files assigned to him or her are complete and that responses to letters of violation are received in a timely manner. The Program Manager and the Bureau Chief now approve the adequacy of licensee responses. Letters in reply to licensee responses are signed by the Program Manager. The Program Manager is reviewing license files each time a “circle of correspondence” is completed pertaining to licensing actions, inspections, or incidents.

The review team found that inspection files were complete, with the exception of one file, which was corrected during the review (as discussed in a previous recommendation above). Inspection reports, deficiency letters, and responses to deficiency letters were found, appropriately filed, in the license file.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Recommendation

> The review team recommends that the State begin documenting all trips to licensees' or applicants' facilities when inspecting licensed activities, performing special inspections, or performing pre-licensing site visits during construction.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that this issue has been discussed with all staff. All information gained through trips to licensed facilities is now documented via memoranda to file, which are signed by the Program Manager.

The review team found that this recommendation has been implemented. Since the last review, there was only one case of a special inspection involving the addition of a new site to a license. The inspection was documented in the license file. Additionally, the State instituted a telephone log for each license file as needed to document communications with the licensee.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State management exercise more stringent supervisory review of inspection reports.

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that by relocating all but one of the inspectors to the central office in Santa Fe, inspection reports are no longer being allowed to accumulate without management review in the Albuquerque office. The Program Manager and Bureau Chief are reviewing licensee responses to cited violations

for adequacy and are signing off on reviews. The Program Manager is signing off on all documents entered in the files.

The review team found that inspection reports were generally signed by management and that deficiency letters were signed by the Bureau Chief. Of the 12 inspection reports evaluated, two did not appear to have been reviewed by management. Both were inspections in which no violations were identified and both were conducted by the inspector in the Albuquerque office. The Program Manager stated that some communication problems still existed between the Santa Fe and Albuquerque offices. The Bureau Chief stated that the Department is planning to close the Albuquerque office and consolidate the staff into the Santa Fe office, which should eliminate communication difficulties.

Interviews with the Bureau Chief and Program Manager identified an awareness of the content of inspection reports. The managers provided feedback to the inspectors to improve the inspection reports and to instill a health and safety focus. This increased management involvement in the inspection process resulted in more performance-based inspections.

Based on the follow-up review, the team considers this recommendation to be closed.

Suggestion

> The review team suggests that the State complete its revision of the inspection report forms, insuring that each set of forms covers all key areas for the type of licensee being inspected, and that RLRP inspectors begin using the standardized form(s).

Current Status

New Mexico responded, in its October 10, 1997 response to the draft IMPEP report, that all inspection report forms were being finalized and distributed to the staff. Staff have been advised as to how inspection forms are to be completed during staff training meetings.

The review team found that the State has updated and revised the inspection forms. Specifically, the following forms have been implemented:

- General Inspection Report Form, dated June 1998;
- Industrial Radiographer Inspection Report Form, dated September 1997;
- Medical Inspection Report Form, Revision 2, dated January 1998; and
- Density Moisture Gauge Inspection Report Form, dated October 1997.

The review team noted that the general inspection report form was used for two nuclear pharmacy inspections as the State does not yet have a specific nuclear pharmacy inspection form. In one case, the inspection report did not document certain technical areas, such as dose calibrator calibrations. The review team showed the staff how to download NRC's inspection field notes from the Internet for their use, as needed.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

The primary intent of this follow-up review was to close out programmatic deficiencies identified during the 1997 IMPEP review. Although not specifically evaluated during this review, the team observed that other evaluation criteria, under this indicator, which were identified as satisfactory during the last review remained adequate and did not show deterioration. These areas include supervisory accompaniments of inspectors and appropriate regulatory actions resulting from inspection findings.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Inspections, be upgraded to a finding of satisfactory.

3.3 Status of Pending Issues Identified under "Technical Staffing and Training"

The review team focused on the three recommendations from the 1997 IMPEP review. New Mexico's performance with respect to the indicator, Technical Staffing and Training, was found to be satisfactory with recommendations for improvement during the 1997 review.

Recommendation

> The review team recommends that the State maintain the RLRP staffing level to at least the level which existed throughout the review period.

Current Status

During the 1997 review exit meeting, Secretary Weidler committed to fill the two vacant Environmental Specialist positions in the radiation control program. Effective February 16, 1998, the positions were filled by Stanley Fitch and Mark Garcia, both with health physics experience. The program is now fully staffed.

New Mexico program management acknowledged, during the 1998 follow-up review, the need to maintain the radiation control program staffing level to at least the current level.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State provide training to technical personnel in the areas of medical brachytherapy and irradiator technology.

Current Status

In October 1997, a one-day brachytherapy training course was presented to staff by the University of New Mexico Cancer Treatment Center. Refresher training is planned annually at the University. In June 1998, a nuclear medicine/brachytherapy safety training course was received from ProTechnics, a consultant. Staff indicated that both training courses were beneficial.

The NRC-sponsored Teletherapy and Brachytherapy course (H-313) is part of New Mexico's core training program. The Program Manager intends to have staff attend this one-week course or an equally comprehensive alternative training course.

In June 1998, ProTechnics also provided a one-day training course on irradiator safety to the New Mexico staff. The training was coordinated with a visit to the Ethicon EndoSurgery pool irradiator in Albuquerque. Staff also attended a Nordion irradiator training course at Ethicon in September 1998.

The Program Manager plans to send one or two staff members to the NRC-sponsored Irradiator Technology course (H-315), if training funds are received.

Discussions with inspection and licensing staff, during the follow-up review, indicated an increase in knowledge and comprehension in brachytherapy and irradiator technologies.

On April 15, 1998, the New Mexico Environment Department formally petitioned the NRC for funding assistance in the pursuit of training. NRC responded to the request, in a June 11, 1998 letter to Secretary Weidler, asking for additional information in support of the request. This issue is pending.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State develop a formalized training program comparable to IMC 1246, "Formal Qualification Programs in the Nuclear Material Safety and Safeguards Program Area."

Current Status

The State developed a "Radiation Protection Licensing and Inspection Training Procedure." The procedure provides a formal qualification protocol for inspectors and license reviewers. The procedure is modeled after IMC 1246 and specifies core and specialized training courses, requires oral qualification boards, and provides a qualification journal to each inspector and license reviewer. Version 1 was approved by the Program Manager on July 6, 1998.

The team verified during interviews that all staff have been given copies of the procedure and their own qualification journals. The two new staff members, hired in February 1998, are presently in training status and are not yet performing independent inspections or license reviews.

Based on the follow-up review, the team considers this recommendation to be closed.

The primary intent of this follow-up review was to close out programmatic deficiencies identified during the 1997 IMPEP review. Although not specifically evaluated during this review, the team observed that other evaluation criteria, under this indicator, which were identified as satisfactory during the last review remained adequate and did not show deterioration.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Staffing and Training, be upgraded to a finding of satisfactory.

3.4 Status of Pending Issues Identified under "Technical Quality of Licensing Actions"

The review team focused on the one suggestion from the 1997 IMPEP review. New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, was found to be satisfactory during the 1997 review.

The team evaluated casework for 10 licenses, including the following types: pool irradiator, well logging, medical institution, broad scope academic, research and development, industrial radiography, source manufacturer, and nuclear pharmacy.

Suggestion

> The review team suggests that documentation of license reviewers' actions be maintained in license files.

Current Status

The State responded in its monthly progress report, dated January 21, 1998, that several of the documents that appeared to be missing from the files, were, in fact, present in the Albuquerque office. Since the IMPEP review, all files have been returned to the centralized office in Santa Fe. The importance of documentation for every action taken by staff has been discussed with the staff. A telephone log is being used to document any conversations with licensees. Additionally, all requests for additional material from licensees will be in writing.

Documentation of license reviewers' actions has improved since the last review. Telephone logs are used to document conversations with licensees. Deficiency letters are used to request additional information from licensees. Additionally, license application evaluation forms are used to review applications and complicated amendments. The evaluation form includes the criteria, any comments by the license reviewer, and what is needed, either from the licensee or in the license, as part of the amendment or application.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, remain as satisfactory.

3.5 Status of Pending Issues Identified under "Response to Incidents and Allegations"

The review team focused on the six recommendations and two suggestions from the 1997 IMPEP review. New Mexico's performance with respect to the indicator, Response to Incidents and Allegations, was found to be satisfactory with recommendations for improvement during the 1997 review.

The team evaluated seven factors pertinent to this indicator: responsiveness, investigative procedures, documentation, corrective actions, follow up, compliance, and notifications. To evaluate the indicator, the team interviewed program management and staff, evaluated the casework for the 10 incidents that occurred since the 1997 IMPEP review, and evaluated the State's response to the 1997 IMPEP review.

During the 1997 review, the team found frequent examples of incomplete, inappropriate, poorly documented, or delayed responses to incidents, including cases which had the potential to result in health and safety problems. Therefore, at the time of the review, based on the IMPEP evaluation criteria, the review team recommended that New Mexico's performance with respect to the indicator, Response to Incidents and Allegations, be found unsatisfactory. With their October 10, 1997, response to the draft report, the State furnished copies of new incident response procedures that appeared adequate to address the concerns. During the December 11, 1997, MRB meeting, it was noted that New Mexico had successfully implemented the new procedures. Based on the implementation of the new procedures, the MRB directed the finding to be revised to satisfactory with recommendations for improvement.

Recommendation

> The review team recommends that the State make on-site, documented investigations of incidents, allegations, or misadministrations with potential health and safety effects (i.e., source disconnects, possible overexposures, lost sources, contamination, etc.).

Current Status

The State's new procedures offer specific guidance on determining the need for on-site investigations. Evaluation of the casework showed that on-site investigations were indicated in four of the ten incidents. In each case, the State responded promptly and appropriately. The incidents were well documented, followed up, and closed out with signed and dated notations of management review.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State create an incident and allegation reporting form that would, at a minimum, identify the person taking the initial report, list the name and telephone number of the reporting party, provide the details of the incident or allegation as reported, record the State's conversation with the licensee or individual, describe corrective actions taken by the licensee, describe the investigation conducted by the State and the results, list citations or other regulatory actions, show the date the investigation was closed out and justification for closure, show date(s) incident was reported to the NRC or other agencies, and provide spaces for the signatures of the investigator and supervisor. A copy of the form should be maintained in the incident file and in the license file.

Current Status

In the response letter dated October 10, 1997, the State furnished a newly designed form, "Incident Report for Radioactive Material Licensees," to the NRC for review. Examination of the form showed that it meets the criteria specified in the recommendation. During the evaluation of casework, the team found that the form is being properly used by the investigators and that copies were appropriately filed in the incident chronological file as well as the licensee's file.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State establish a protocol for making independent investigations and evaluations of the licensee's actions.

Current Status

The protocol for making independent investigations and evaluations of the licensee's actions was provided to the NRC in New Mexico's letter dated October 10, 1997. Appropriate incident investigations and evaluations of licensee's actions were performed for all of the incidents reviewed.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State initiate procedures to ensure incidents are followed up at the next inspection to verify that the licensee's corrective actions have been implemented.

Current Status

A section entitled, "Incidents/Reports" has been added to the inspection forms to ensure that inspectors review events that may have occurred since the last inspection of the licensee. Of the 21 incidents reviewed during the 1997 and 1998 reviews, the team identified eight licensees which had subsequent inspections. Although one was missed early in the review period, seven had been followed up appropriately.

Based on the follow-up review, the team considers this recommendation to be closed.

Suggestion

> The review team suggests that when evaluating incidents, the State cite appropriate deficiencies when applicable.

Current Status

In their October 10, 1997, response to the NRC, the State committed to sending deficiency letters or citations when indicated. Of the incidents which occurred since the last review, citations were appropriate for only one incident. That incident investigation was in process at the time of this review, and a Notice of Violation had not yet been sent, but was planned for the near future. The Program Manager stated that formal Notices of Violation would be issued for deficiencies, found during incident investigations as is done in the routine inspection program.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Recommendation

> The review team recommends that the State: (a) set up a separate incident and allegation file system in the Santa Fe office, keeping all documents and records pertaining to an incident in one location, with the data cross-referenced to the license/inspection files there and in the Albuquerque office, and (b) establish a system to centrally log and track the progress of incidents and allegations.

Current Status

The team found that the incident and allegation file system has been moved to the Santa Fe office. Copies will be kept in the Albuquerque files until that office is closed. The team verified that documents are cross-referenced to licensee files in both offices. A new computer system has been established to log and track the progress of incidents and allegations. The staff was able to successfully demonstrate the system by sorting and printing the information as requested by the team. The team also compared the printed list with the incidents reported for New Mexico in the "Nuclear Materials Events Database (NMED)" and found that they agreed.

Based on the follow-up review, the team considers this recommendation to be closed.

Recommendation

> The review team recommends that the State develop and implement written procedures for responding to events involving radioactive material and conduct training sessions until all technical staff are fully trained and qualified in emergency response.

Current Status

Three newly developed procedures: “Standard Operating Procedure for Response to Incidents Involving Radioactive Materials,” “Incident Investigation Procedures,” and “Incident Reporting System/Abnormal Occurrence Criteria” were found adequate by the NRC after they were included with the October 10, 1997, letter from the State. The team verified that the procedures were being followed by the investigators. The team also verified during staff interviews that all responders had been given copies of the procedures and that they had been instructed in emergency response during weekly meetings and discussions that take place after each event.

Based on the follow-up review, the team considers this recommendation to be closed.

Suggestion

> The review team suggests that the State keep expanding the allegation procedures to include procedures for notifying the person making the allegation of the results of the investigation and including the allegation procedures in the event reporting form, tracking system, and emergency response procedures.

Current Status

The team found that the State's allegation procedures have been completely rewritten. There are provisions for notifying the person making the allegation of the results of the investigation. The procedures have been changed to include allegations in the event tracking system and emergency response procedures.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

The primary intent of this follow-up review was to close out programmatic deficiencies identified during the 1997 IMPEP review. Although not specifically evaluated during this review, the team observed that other evaluation criteria, under this indicator, which were identified as satisfactory during the last review remained adequate and did not show deterioration. These areas include notifications of incidents to NRC and other Agreement States.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Response to Incidents and Allegations, be upgraded to a finding of satisfactory.

4.0 NON-COMMON PERFORMANCE INDICATORS

The team reviewed one non-common performance indicator that applied to the New Mexico program, Legislation and Program Elements Required for Compatibility

4.1 Status of Pending Issues Identified under "Legislation and Program Elements Required for Compatibility"

The review team focused on the one recommendation and one suggestion from the 1997 IMPEP review. New Mexico's performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, was found to be satisfactory during the 1997 review.

Recommendation

> The review team recommends that the State expedite promulgation of the compatibility-related regulations now overdue and those which are due within the next 12 months.

Current Status

The overdue compatibility regulations and those due through May 16, 1999, are in the process of being adopted. Drafts of the 11 regulations listed below were sent to the NRC for review on June 15, 1998, and the State was awaiting the results of that review at the time of the follow-up IMPEP review. The State missed their projected adoption date for these regulations of June 1998 and have extended it to October 1998.

- "Decommissioning Recordkeeping and License Termination: Documentation Additions," 10 CFR Parts 30, 40, 70, and 72 amendments (58 FR 39628) that became effective on October 25, 1993, and became due on October 25, 1996.

- "Self-Guarantee as an Additional Financial Mechanism," 10 CFR Parts 30, 40, and 70 amendments (58 FR 68726 and 59 FR 1618) that became effective on January 28, 1994, and became due on January 28, 1997.

- "Timeliness in Decommissioning of Materials Facilities," 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026) that became effective on August 15, 1994, and became due on August 15, 1997.

- "Preparation, Transfer for Commercial Distribution and Use of Byproduct Material for Medical Use," 10 CFR Parts 30, 32 and 35 amendments (59 FR 61767, 59 FR 65243, 60 FR 322) that became effective on January 1, 1995, and became due on January 1, 1998.

- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendments (60 FR 15649, 60 FR 25983) that became effective March 1, 1998, and became due on March 1, 1998.

- "Frequency of Medical Examinations for Use of Respiratory Protection Equipment," 10 CFR Part 20 amendments (60 FR 7900) that became effective on March 13, 1995, and became due on March 13, 1998.

- “Radiation Protection Requirements: Amended Definitions and Criteria,” 10 CFR Parts 19 and 20 amendments (60 FR 36038) that became effective August 14, 1995, and which will become due on August 14, 1998.

- “Medical Administration of Radiation and Radioactive Materials” 10 CFR Parts 20 and 35 amendments (60 FR 48623) that became effective on October 20, 1995, and which will become due on October 20, 1998.

- "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendments (60 FR 38235) that became effective November 24, 1995, and which will become due on November 24, 1998.

- "Compatibility with the International Atomic Energy Agency," 10 CFR Part 71 amendment (60 FR 50248, 61 FR 28724) that became effective April 1, 1996, and which will become due on April 1, 1999.

- "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," 10 CFR Parts 20 and 30 amendments (61 FR 24669) that became effective on May 16, 1996, and which will become due on May 16, 1999.

In addition, the State plans to add the rule, "Licenses for Industrial Radiography and Radiation Safety Requirements of Industrial Radiography Operations," 10 CFR Parts 30 and 34 amendments (62 FR 28947) that became effective on June 27, 1997, to the current package. This rule covers all previous Part 34 requirements, some of which were apparently overlooked in previous rule changes.

It is noted that Management Directive 5.9, Handbook, Part V, paragraph (1)(c)(iii), provides that the above regulations should be adopted by the State as expeditiously as possible, but not later than 3 years after the effective date of the new Commission Policy Statement on Adequacy and Compatibility, i.e., September 3, 2000.

Until the overdue regulations become effective, the team considers this recommendation to be open.

Suggestion

The review team suggests that a file be maintained with the cover letters and ensuing correspondence of all draft or final regulations sent to the NRC.

Current Status

The State created a regulation correspondence file to track the progress of the promulgation and review process. In reviewing the file, however, the team found that a cover letter was not sent for the recent package of regulations presently under NRC review. The State explained that this was apparently an oversight, and that the policy is to maintain cover letters in the regulation file.

Based on the follow-up review, the review team notes the actions taken by the State in response to this suggestion, and considers this suggestion to be closed.

Based on the team's findings during the follow-up review and the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, remain as satisfactory.

5.0 **SUMMARY**

The New Mexico radiation control program has made significant strides since the July 1997 IMPEP review. The program is now fully staffed with experienced personnel, training deficiencies are being addressed, and program management is providing an appropriate amount of oversight and support.

The follow-up review team found the State's performance in responding to and resolving 28 of the 29 recommendations and suggestions to be satisfactory. The only remaining open recommendation concerns the promulgation of regulations required for compatibility.

Funding for the program is still a major issue, especially regarding the training budget. Secretary Weidler committed to submit a budget request for additional training funding or to pursue a

statutory amendment to initiate a licensee fees program with proceeds directed to a dedicated program fund. Requested funding assistance from the NRC is seen as an interim measure until an appropriate course of action is approved by the State legislature.

As discussed earlier in this report, the follow-up review team considers all of the common performance indicator recommendations and suggestions to be closed. Progress has been made on the one non-common performance indicator reviewed (the indicator was found satisfactory during the 1997 review) and compatibility-required regulations should be adopted by October 1998.

The review team recommended and the MRB concurred, that for each of the five common performance indicators and the one non-common performance indicator, New Mexico's performance be found satisfactory and that the program as a whole be considered adequate to protect public health and safety and compatible with NRC's regulatory program. The MRB also concurred in the team's recommendation that the heightened oversight of the New Mexico radiation control program be discontinued.

Below is the one remaining recommendation which is not considered closed, as mentioned earlier in the report, for consideration by the State.

Recommendation

The review team recommends that the State expedite promulgation of the compatibility-related regulations now overdue and those which are due within the next 12 months. (Section 4.1)

LIST OF APPENDICES

Appendix A	IMPEP Follow-up Review Team Members
Appendix B	New Mexico Organizational Charts
Appendix C	New Mexico Progress Reports, January 1998, March 1998, and May 1998
Attachment 1	Letter dated August 18, 1998 from Ed Kelley, Ph.D., Director, Water and Waste Management Division, New Mexico Environment Department

APPENDIX A

IMPEP FOLLOW-UP REVIEW TEAM MEMBERS

Name	Areas of Responsibility
James Lynch, RIII	Team Leader Status of Materials Inspection Program Technical Staffing and Training
Jack Hornor, RIV/WCFO	Response to Incidents and Allegations Legislation and Program Elements Required for Compatibility
M. Linda McLean, RIV	Technical Quality of Inspections
Torre Taylor, NMSS	Technical Quality of Licensing Actions

APPENDIX B

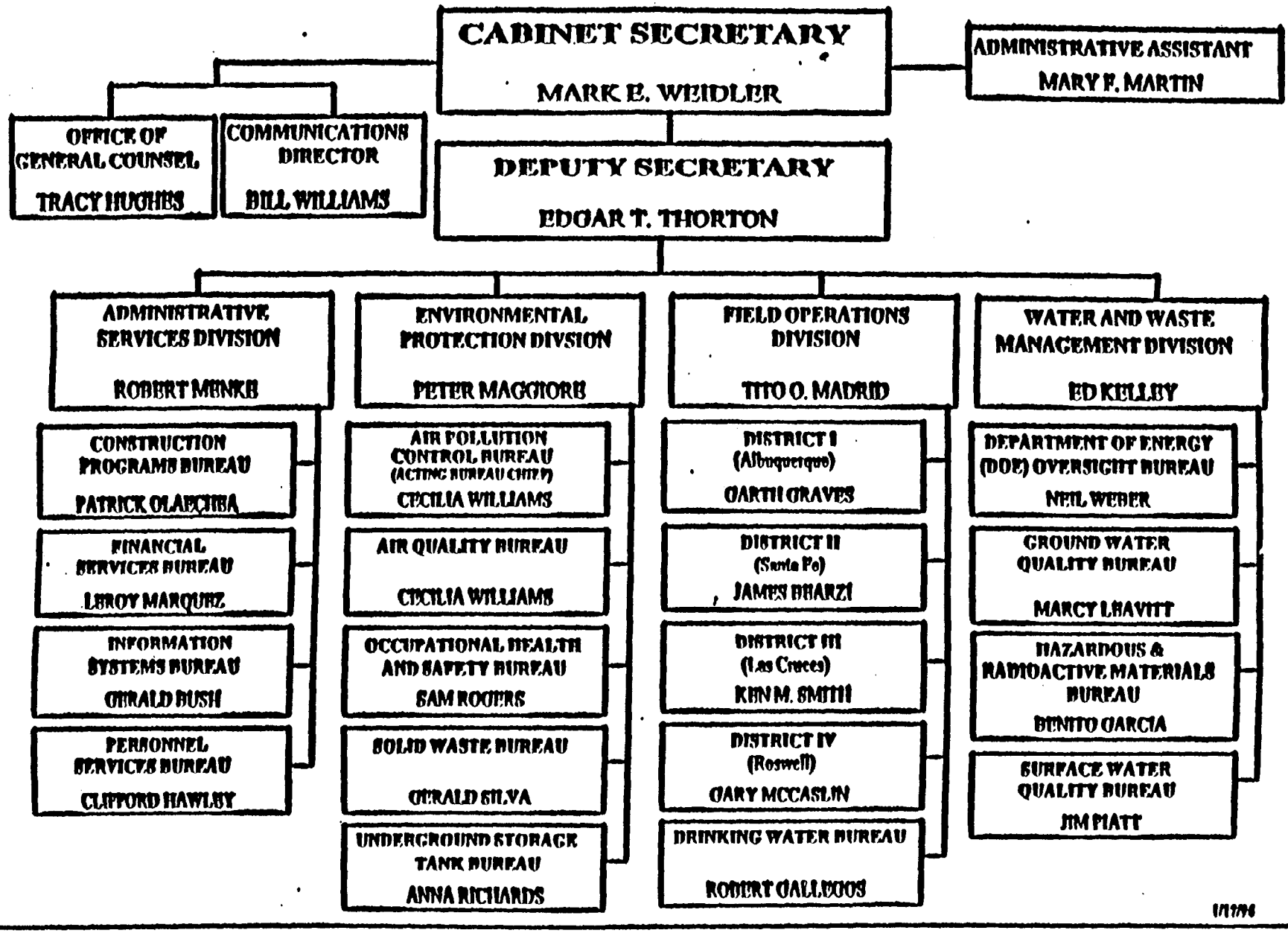
NEW MEXICO ENVIRONMENT DEPARTMENT

AND

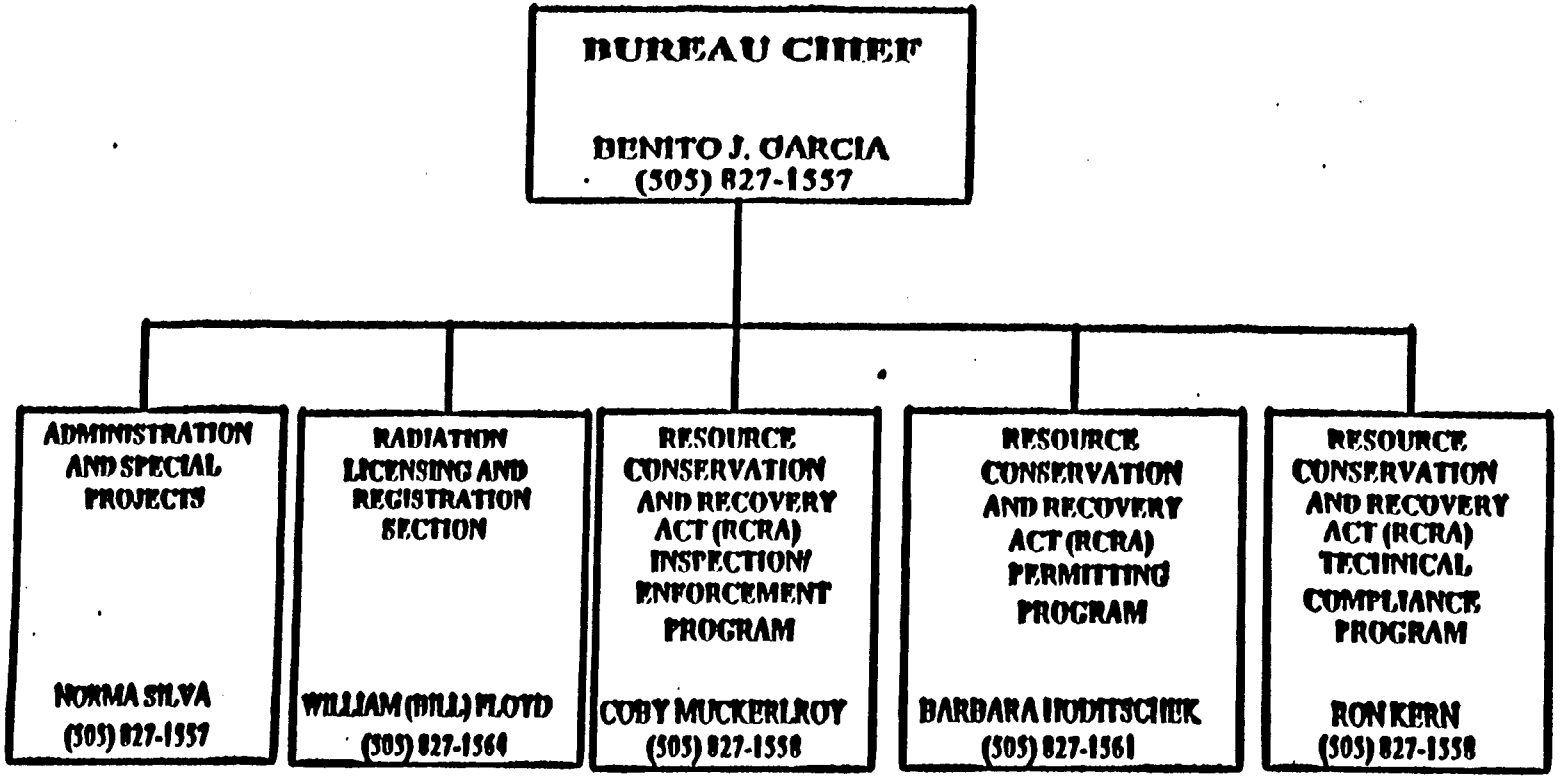
HAZARDOUS RADIOACTIVE MATERIALS BUREAU

ORGANIZATION CHARTS

NEW MEXICO ENVIRONMENT DEPARTMENT



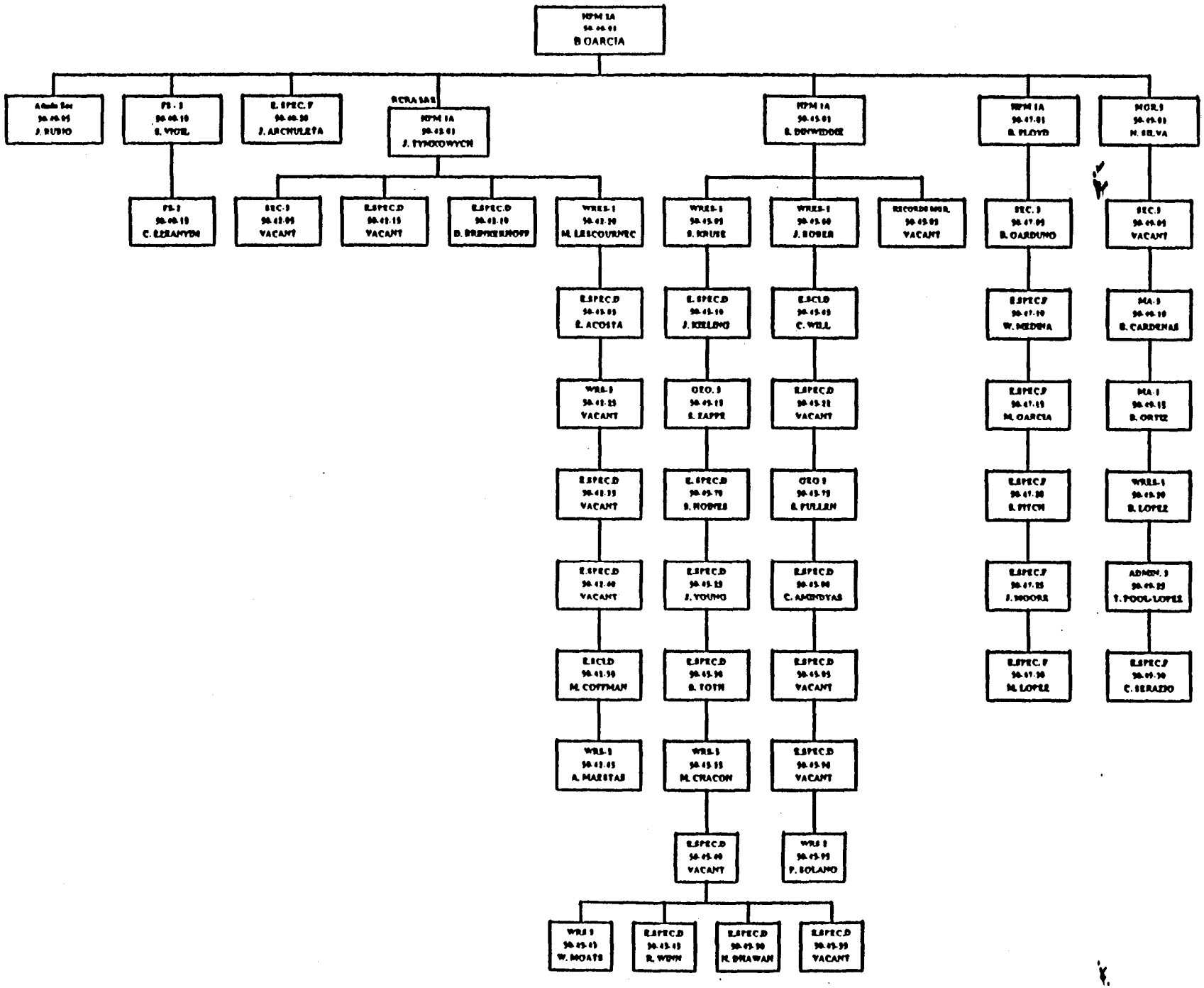
HAZARDOUS AND RADIOACTIVE MATERIALS BUREAU



9/20/91

HAZARDOUS RADIOACTIVE MATERIALS BUREAU

06/09/98



APPENDIX C

NEW MEXICO PROGRESS REPORTS

JANUARY 21, 1998,
MARCH 27, 1998,
AND
MAY 29, 1998

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous & Radioactive Materials Bureau
2044 Galisteo
P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-1557
Fax (505) 827-1544

GARY E. JOHNSON
GOVERNOR

MARK E. WEIDLER
SECRETARY

EDGAR T. THORNTON, III
DEPUTY SECRETARY

January 21, 1998

97 JAN 27 AM 9:41
OSP

Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Bangart:

As per Mr. Hugh L. Thompson's request in his letter dated December 30, 1997, to New Mexico Environment Secretary Mark E. Weidler, I am submitting the first of the requested bi-monthly progress reports addressing the IMPEP team's suggestions and recommendations.

I appreciate the courtesy and concern expressed by the IMPEP review team and the members of the MRB and thank all of you for the advice and recommendations given to improve the new Mexico Radiation Control Program. We look forward to working cooperatively with the NRC in the future.

Please call me at (505)827-1862 should you have any questions.

Sincerely,

William M. Floyd
Program Manager

cc: Mark Weidler, Secretary
New Mexico Environment Department

Ed Kelley, Director
Water and Waste Management Division

Benito J. Garcia, Chief
Hazardous and Radioactive Materials Bureau

ACTIONS DOCUMENTATION AND PROCEDURES ADOPTED BY NEW MEXICO RCP TO ADDRESS MRB CONCERNS

INTRODUCTION: Below is a summary list of suggestions and recommendations identified by the IMPEP Review Team as requiring action by the State:

1. The review team recommends that the nuclear pharmacy inspection frequency be modified from 2 years to 1 year. (Section 3.1)

Response: As Attachment 1 indicates, inspection frequency for nuclear pharmacies has been increased from once every 2 years to annually. The two-year inspection frequency being used previously was based on that recommended in out dated copy of IMC 2800.

2. The review team recommends that initial inspections of licensees be performed within 6 months of licensee's receipt of material and commencement of operations, consistent with IMC 2800. (Section 3.1)

Response: The Bureau Chief, who signs all newly issued licenses, has established a hard copy file for new licenses in his office and will track new license inspections on a six month basis. The RCP Program manager has established a tickler file and will remind inspectors of inspections coming due during a two-month block at least a month in advance. The computer database will likewise flag newly issued licenses which need to be inspected within six months. Additionally, a standard condition has been added to newly-issued licenses instructing licensee to notify RCP within ten days of receipt of licensed material.

3. The review team recommends that the tracking system be revised to allow initial inspections to be readily identified to staff and management. (Section 3.1)

Response: Computer printouts of licensees showing inspections coming due will be generated the last week of every month. A copy of this printout will be given to both management and inspection staff. This has been done for the month of October and January 1998, and will continue to be done the last week of every month.

4. The review team recommends that the State increase the number of reciprocity inspections to better evaluate the health and safety implications of out-of-state companies working in New Mexico. (Section 3.1)

Response: When notification is received of an out-of-state licensee's impending entry into the state, the RCP Program Manager will make a copy of notification form and forward to individual assigned that geographical area. Every attempt will be made to conduct an unannounced inspection of the reciprocal licensee. If unannounced inspections are not possible due to inability to locate licensee, documented phone calls will be made to obtain directions to field site or to coordinate a meeting between RCP Staff and reciprocal licensee to allow accompanied visit to field site. If staff workload, unavailability of staff or other considerations do not allow for inspections of reciprocal licensees in field locations, the RCP Program Manager will indicate on notification form why inspection were not conducted. Master reciprocity inspection file will be maintained by RCP Program Manager in Santa Fe. Reciprocal license inspections will be coordinated with routine inspections of State licensees whenever possible to maximize use of in-state travel funding. Program goal will be to conduct on-site inspections of a minimum of 50% of all Priority 1 and 2 reciprocal licenses. As of December 1997, eight reciprocity inspections have been accomplished, including seven of priority 1 and 2 licensees. This amounts to and inspection ratio of 73% of all reciprocal licensees entering the state.

5. The review team recommends that the State maintain the RCP staffing level to at least the level which existed throughout the review period. (Section 3.2)

Response: The two Environmental Specialist positions vacated since the IMPEP review were approved for hire and were advertised for applicant interviews. A total of 19 applications have been received. All applicants have submitted resumes and copies of state employment applications. We are in the process of requesting a re-ranking of applicant qualifications from State Personnel to better reflect actual qualifications.

6. The review team recommends that the State provide training personnel in the areas of medical brachytherapy and irradiator technology. (Section 3.2).

Response: Dr. Tom Kirby, Medical Physicist at the University of New Mexico Cancer Treatment Center, provided brachytherapy training to RCP staff on October 14, 1997, and will provide refresher training to program staff annually. There are currently brachytherapy programs at four hospitals in the State.

Paul Ripley, RSO at Ethic on EndoSurgery's 5 million curie Co-60 irradiator in Albuquerque, has approved RCP staff attendance at pool irradiator training to be offered by Nordion sometime in January 1998. This training will be updated on an annual basis. There are currently two pool irradiators in the State: the one at Ethic on and a 20,000 curie Co-60 model used for instructional and research purposes at the University of New Mexico.

New Mexico RCP staff observed all operations pertaining to production, assaying, packaging and shipping of radiopharmaceutical kits at Syncor Radiopharmacy on November 6, 1997.

RCP staff received training in dose calibrator constancy, accuracy, linearity and geometry dependence, as well as the receipt, assay and radiation monitoring of incoming radiopharmaceuticals at Los Alamos Medical Center on November 19, 1997.

7. The review team recommends that the State develop a formalized training program comparable to IMC 1246, "Formal Qualification Programs in the Nuclear Material Safety and Safeguard Program Area." (Section 3.2)

Response: The State is in the process of developing a formalized training program comparable to IMC 1246. The States of Texas, Colorado and Arizona have been contacted about the possibility of providing on-hands training to the New Mexico RCP staff.

8. The review team suggests that documentation of license reviewer's actions be maintained in license files. (Section 3.2)

Response: Several documents verbally identified by the IMPEP review team as being missing from license files were in fact present in the Albuquerque RCP office. Since the IMPEP review, all files have been returned to the centralized Santa Fe RCP office. The importance of documentation for every action taken by staff in response to licensees' requests has been discussed at RCP staff meetings. A telephone log sheet has been inserted at the front of every license folder for documenting conversations. All requests for additional material from licensees will henceforth be in writing.

9. The review team recommends that the State inspectors attempt to observe licensee operations or demonstrations during all inspections. (Section 3.4)

Response: Program Management has begun more frequent accompaniments of junior staff and will continue doing so as new staff are hired. A total of 15 license inspections have occurred since the IMPEP review where management has accompanied staff. The Standard Operating Procedures Manual for License Inspections has been revised, and a copy has been made available to each staff member. The importance of performance-based-inspections has been discussed at RCP staff meetings and inspection forms have been finalized reflecting performance-based inspections. The importance of interviews with workers, independent measurements, status of previous violations, and the substance of discussions during exit interviews with management are reflected in the newly-revised inspection report forms.

With the relocation of all but one inspector to a centralized location, the Program Manager will now be able to discuss inspections face-to-face with inspectors and thereby will be able to ascertain what was found during inspections, and what additional material needs to be addressed. The one non-

central office inspector will personally bring all inspection forms to the central office and discuss findings with the Program Manager as inspections are accomplished.

10. The review team recommends that the State inspectors conduct independent measurements on all inspections. (Section 3.4)

Response: RCP staff have been advised of the importance of taking independent measurements on all inspections. The State Scientific Laboratory Division (SLD) is working more closely with the RCP in determining Program needs (Quarterly meetings are now being held between SLD and the RCP to determine analytical needs of the RCP and radiochemistry capabilities of SLD). Independent measurements have been made on all inspections since the IMPEP Review.

11. The review team recommends that the State increase the rigor of reviewing technical health physics issues during inspections, and increase the breadth and scope of inspections. (Section 3.4)

Response: Inspection forms and Inspection Guidance Documents have been revised to reflect the importance of in-depth inspections. Monthly staff meetings have been initiated and will to discuss revised forms and guidance documents. Minutes of these meetings have been kept showing the scope of these discussions.

12. The review team suggests that the State inspectors attempt to interview ancillary workers during inspections. (Section 3.4)

Response: RCP staff have been reminded of the importance of interviewing ancillary workers during inspection. The provisions of Subpart 10, Section 1005, New Mexico Radiation Protection Regulations, which pertain to consultation with workers during inspections have been discussed during staff meetings.

13. The review team recommends that the State inspectors attempt to conduct formal exit meetings with the senior licensee management on all inspections. (Section 3.4)

Response: Inspection forms and inspection guidance documents now indicate that "the closeout conference should be held with the licensee's highest level of management available," and that "inspectors should always contact upper management upon entering a facility." The importance of contacting upper management as a follow-up, if upper management is unavailable at time of inspection, has been discussed at staff meetings. Senior Management exit interviews have been held on all inspections conducted since the IMPEP Review.

14. The review team recommends that the State develop a formal process for reviewing licensee responses to deficiency letters and closing open deficiencies. (Section 3.4)

Response: All responses will be tracked using tickler file. Both the RCP Program Manager (initially) and the Bureau Chief will sign off on the adequacy of licensee response. Requests for additional information are now made in writing, with copies of all correspondence placed in license folders.

15. The review team suggests that the State develop a formal process for inspectors and license reviewers to document and transmit pertinent information to each other for follow-up. (Section 3.4)

Response: Weekly staff meetings are now being held to discuss the previous week's activities. RCP Program Manager and inspectors discuss information resulting from previous week's inspection efforts. Any need for documentation is satisfied in writing.

16. The review team suggests that the State develop a process for ensuring that inspection files are complete, that all appropriate State documents are prepared and filed, and that licensee responses are received and filed. (Section 3.4)

Response: Each inspector will be held responsible for ensuring that all inspection files assigned to him or her are complete and that responses to letters of violation are received in timely manner. In accordance with Item 14, adequacy of responses is now approved by both Program Manager and Bureau Chief.. Letters in reply to licensee responses will be signed by Program Manager. Program Manager is reviewing license files each time "circle of correspondence" is completed pertaining to licensing action, inspection, or incident.

17. The review team recommends that the State begin documenting all trips to licensees' or applicants' facilities when inspecting licensed activities, performing special inspections, or performing pre-licensing site visits during construction. (Section 3.4)

Response: The importance of documentation has been discussed at RCP staff meetings. All information gained through trips to licensed facilities is now documented via memoranda to file signed off on by RCP Program Manager.

18. The review team recommends that the State management exercise more stringent supervisory review of inspection reports. (Section 3.4)

Response: By relocating all but one of the RCP inspectors to a centralized location, inspection reports are no longer being allowed to accumulate without management review in field office. Both Program Manager and the Bureau Chief are reviewing licensee responses to cited violations for adequacy and are signing off on reviews. Program Manager is signing off on all documents entered in files.

19. The review team suggests that the State complete its revision of the inspection report forms, ensuring that each set of forms covers all key areas for the type of licensee being inspected, and that RCP inspectors begin using the standardized form(s). (Section 3.4)

Response: All inspection report forms are being finalized and copies have been distributed to

staff. Staff have been advised as to how inspection forms are to be completed during staff training meetings.

20. The review team recommends that the State make onsite, documented investigations of incidents, allegations, or misadministrations with potential health and safety effects (i.e., source disconnects, possible over exposures, lost sources, contamination, etc.) (Section 3.5)

Response: A guidance document has been written outlining the standard operating procedures to be followed in response to incidents involving radioactive materials. A copy of these documents has been provided to each RCP staff member. The contents of these incident response guidance document have been discussed at RCP staff meetings. NRC has indicated satisfaction with current report forms and the manner that incidents are now being investigated and documented.

21. The review team recommends that the State create an incident and allegation reporting form that would, at a minimum, identify the person taking the initial report, list the name and telephone number of the reporting party, provide the details of the incident or allegation as reported, record the State's conversation with the licensee or individual, describe corrective actions taken by the licensee, describe the investigation conducted by the State and the results, list citations or other regulatory actions, show the date the investigation was closed out and justification for closure, show date(s) incident was reported to the NRC or other agencies, and provide spaces for the signatures of the investigator and supervisor. A copy of the form should be maintained in the incident file and in the license file. (Section 3.5)

Response: Incident and allegation report forms have been developed by the RCP which incorporate all of the above, Additionally, standard operating procedures have been developed for both incident and allegation investigations and made available to Program Staff.

22. The review team recommends that the State establish a protocol for making independent investigations and evaluations of the licensee's actions. (Section 3.5)

Response: A protocol has been developed for making independent investigations and evaluating the licensee's actions.

23. The review team recommends that the State initiate procedures to ensure incidents are followed-up at the next inspection to verify that the licensee's corrective actions have been implemented. (Section 3.5)

Response: A separate section entitled "Incidents/Reports" has been incorporated into inspection forms giving information on types of incidents that may have occurred since last inspection and to address notification reports and corrective actions. The importance of completing this section has been stressed with RCP staff.

24. The review team suggests that when evaluating incidents, the State cite appropriate items of deficiencies when applicable. (Section 3.5)

Response: Deficiency letters are being sent to any licensee where a breakdown of procedures occurred resulting in a reportable incident. Management interviews are being held to discuss cause of incident, results and corrective actions taken.

25. The review team recommends that the State: (a) set up a separate incident and allegation file system in the Santa Fe office, keeping all documents and records pertaining to an incident in one location, with the data cross-referenced to the license/inspection files there and in the Albuquerque office, and (b) establish a system to centrally log and track the progress of incidents and allegations. (Section 3.5)

Response: The incident and allegation file system has been moved from the Albuquerque office to the Santa Fe office. A new Incident/Allegation Checklist has been developed, as well as a new Incident/Allegation Report Form. The NMED database is being utilized to track all incidents and allegations and forwarded to NRC. A chronology file (hard copy) will also be kept in the Santa Fe

office, and a tickler file has been established to track the progress of incidents and allegations. .

26. The review team recommends that the State develop and implement written procedures for responding to events involving radioactive material and conduct training sessions until all staff are fully trained and qualified in emergency response. (Section 3.5)

Response: Written procedures are in place for responding to events involving radioactive material and staff has been instructed in their use.

27. The review team suggests that the State keep expanding the allegation procedures to include procedures for notifying the person making the allegation of the results of the investigation and including the allegation in the event reporting form, tracking system, and emergency response procedures (Section 3.5)

Response: A guidance document is now in place covering various aspects of allegation procedures, including the notification of the person making the allegation. Allegations are being tracked by the Program Manager & entered into database as if it were reportable incident.

28. The review team recommends that the State expedite promulgation of the compatibility-related regulations now overdue and those which are due within the next 12 months. (Section 4.1.2)

Response: Subpart 3, Section 311. G.4.a through d (pages 3-32 through 3-33) contains the compatibility language for "Decommissioning Record keeping and License Termination; Documentation Additions" and was adopted by the New Mexico EIB, April 3, 1995, and became effective May 3, 1995.

Language from the Federal Register (61 FR 24669) was approved by the Radiation Technical Advisory Council (RTAC) for inclusion under Subpart 3, Section 311.G (page 3-32) NMAC3.1. The RTAC will recommend adoption of these changes by the Environmental Improvement Board.

Self-Guarantee as an Additional Financial Mechanism, "10 CFR Parts 30,40, and 70 amendments (58 FR 68726 and 59 FR 1618) that became effective on January 28, 1994, and which became due on January 28, 1997. Language from the Federal Register (58 FR 68726 and 59 FR 1618) was approved by the Radiation Technical Advisory Council (RTAC) at their September 24, 1997 meeting for inclusion in Subpart 4, NMAC3.1. The RTAC will recommend adoption of these changes to the Environmental Improvement Board.

Work continues on inserting language for the following amendments to the New Mexico Radiation Protection Regulations. Once the insertions have been made, the amended regulations will be taken before the RTAC for approval prior to submittal to the Environmental Improvement Board. (These will be adopted no later than May 1998):

1. Timeliness in Decommissioning of Materials Facilities, "10CFR Parts 30,40 and 70 amendments.
2. Preparation, Transfer for Commercial Distribution and Use of Byproduct Material for Medical Use, "10 CFR Parts 30, 32, and 35 amendments."
3. Low-Level Waste Shipment Manifest Information and Reporting, "10 CFR parts 20 and 61 amendments."
4. Frequency of Medical Examinations for Use of Respiratory Protection Equipment, "10 CFR Part 20 amendments."
5. Radiation Protection Requirements: Amended Definitions and Criteria, "10 CFR Parts 19 and 20 amendments."
6. Medical Administration of Radiation and Radioactive Materials, 10 CFR Parts 20 and 35 amendments."
7. Clarification for Decommissioning Funding Requirements, "10 CFR Parts 30, 40, and 70 amendments."
8. Compatibility with the International Atomic Energy Agency, "10 CFR Part 71 amendment."
9. Termination or Transfer of Licensed Activities: Record keeping Requirements, "10 CFR Parts 20 and 30."

29. The review team suggests that a file be maintained with the cover letters and ensuing correspondence of all draft or final regulations sent to the NRC. (Section 4.1.2).

Response: All NRC-related correspondence pertaining to regulation development is kept in separate file for easy access.

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August 18, 1998

Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Bangart:

Thank you for your letter of August 6, 1998, which documents the results of the Agreement State follow-up review held in Santa Fe July 7-10, 1998.

We were pleased to learn that the State has responded to and resolved 28 of the 29 recommendations and suggestions from the 1997 review. The only remaining open recommendation, the promulgation of regulations required for compatibility, is in the process of resolution. The follow-up review team's recommendation to the Management Review Board (MRB) that for each of the five common indicators and the one non-common indicator reviewed, New Mexico's performance be found satisfactory and that the program as a whole be considered adequate to protect public health and safety and compatible with NRC's regulatory program is most encouraging to myself and staff. Depending on the scheduling of the MRB, I and Bill Floyd, of my staff, will plan on appearing before the MRB to discuss the review team's findings.

Once again, I appreciate the courtesy and assistance offered by the IMPEP review team and thank all of you for the advise and recommendations given to improve the New Mexico Radiation Control Program. We look forward to working cooperatively with the NRC in the future.

Sincerely,

Ed Kelley, Ph.D., Director
Water and Waste Management Division

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ATTACHMENT 1