UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 10, 1997

Mr. James Wiley, Interim Director
Department of Regulation and Licensure
Nebraska Health and Human Services System
301 Centennial Mall South
P.O. Box 95007
Lincoln, NE 68509-5007

Dear Mr. Wiley:

Enclosed is the final report of the Follow-up IMPEP review of the Nebraska Radiation Control Program. The review of the Nebraska program was conducted by an interoffice team during the period September 16-18, 1997. The follow-up review covered the State's response to, and resolution of, 15 recommendations made during the July 15-19, 1996 IMPEP review.

The review team found the State's performance in responding to and resolving the 15 recommendations within the State's scheduled "Get-Well Plan" completion date of July 1, 1997, to be satisfactory with the exception of Recommendations 6 and 10. Recommendation 6 discussed the need for the State to develop comprehensive administrative and technical procedures. This area was identified as one of the primary root causes for the significant deficiencies found in the program during the previous 1996 IMPEP review. Recommendation 10 specifically discussed the need to develop procedures for responding to allegations. The team concluded that overly optimistic assumptions and inexperience by program management and staff in the Agreement State program contributed to the underestimate of the time and resources required to complete the "Get-Well Plan." Additionally, NRC recognizes the State's efforts to provide a timely response to two of the recommendations made by the team at the exit briefing with the State: (1) development of a new schedule for completion of the written procedures, to be provided within two weeks after the completion date of the onsite follow-up review, and (2) that the State provide monthly status reports by telephone. The State provided a new schedule for completion of the written procedures and other pending "Get-Well Plan" issues on October 1, 1997, and monthly teleconferences were scheduled and conducted on October 8, 1997 and November 5, 1997.

Based on the follow-up IMPEP review, the MRB finds that the Nebraska program remains adequate to protect public health and safety but needs improvement, and compatible with NRC's program.

Based on the results of the follow-up IMPEP review, the next IMPEP review will be scheduled within one year of the date of this follow-up review.

Section 5 on page 15 of the enclosed final report presents the follow-up IMPEP team's recommendations. We request your evaluation and response to Recommendations 2 through 5 within 30 days from the receipt of this letter.

I appreciate the courtesy and cooperation extended to the IMPEP team during the follow-up review.

Sincerely,

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

Enclosure:
As stated

cc: Robert Leopold, Administrator
Public Health Assessment Division
Nebraska Health and Human Services System

Brian Hearty, Program Manager
Radioactive Materials
Nebraska Health and Human Services System

David P. Schor, M.D., M.P.H.
State Liaison Officer

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Original Signed By
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State Liaison Officer

bcc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

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***See previous concurrence.**

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP) FOLLOW-UP REVIEW OF THE NEBRASKA RADIATION CONTROL PROGRAM

SEPTEMBER 16-18, 1997

FINAL REPORT

U. S. Nuclear Regulatory Commission

1.0 **INTRODUCTION**

This report presents the results of the follow-up review of the Nebraska radiation control program conducted September 16-18, 1997. 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 September 12, 1995, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." The follow-up review covered the State's response to, and resolution of, 15 recommendations made during the July 15-19, 1996 IMPEP review. The follow-up review also covered the status of the program during the following period of July 20, 1996 - September 12, 1997. Preliminary results were discussed with Nebraska management on September 18, 1997.

A draft of this report was issued to Nebraska for factual comment on October 10, 1997. The State of Nebraska responded in a letter dated October 31, 1997, from Robert Leopold, Administrator, Public Health Assessment Division, Department of Regulation and Licensure, Nebraska Health and Human Services System (Attachment 1). The State's comments have been incorporated into the final report. A copy of the final report was provided to the Management Review Board (MRB). The MRB considered and concurred in the team's overall recommendation and found the Nebraska radiation control program remains adequate to protect public health and safety but needs improvement, and compatible with NRC's program.

The Nebraska Department of Health and Human Services System (NHHS) is the agency within the State of Nebraska that regulates, among other public health issues, radiation hazards. The Director, NHHS, is appointed by and reports directly to the Governor. Within NHHS, the Nebraska radiation control program is administered by the Department of Regulation and Licensure, under the Public Health Assessment (PHA) Division. The program is coordinated within Consumer Health Services (CHS) under the Consumer Safety Protection Team. The CHS team was recently reorganized in May 1997 to consolidate all radiation programs including X-ray. The Department of Regulation and Licensure and the PHA Division organization charts are included as Appendix B. During the review period, the Nebraska program regulated 148 specific licenses which include three large commercial irradiators, one converted teletherapy research irradiator, manufacturers, broad academic, broad medical, radiopharmacy and radiographers. The State is also in the process of conducting a licensing review of a low-level radioactive waste disposal site. The low-level radioactive waste (LLRW) disposal regulatory program is jointly administered and managed by NHHS and the Nebraska Department of Environmental Quality (NDEQ) through a Memorandum of Understanding. In addition to its radioactive materials and low-level radioactive waste disposal programs, NHHS is responsible for the control of machine produced radiation, NARM, and emergency response planning for two nuclear power plants. The follow-up review focused on the materials program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of Nebraska.

The review team's general approach for conduct of the follow-up review included:
(1) evaluation of the State's implementation of their "Get-Well and Stay-Well Plan," that was accepted by the MRB at the January 22, 1997 MRB meeting, (2) the status of the program during

the period of July 20, 1996 - September 12, 1997, (3) review of the status of applicable Nebraska statutes and regulations, (4) review of quantitative information from the radiation control program licensing and inspection database, (5) technical review of selected inspection 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 15-19, 1996, resulted in a finding for Nebraska 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 Nebraska 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 Nebraska radiation control program management. In consideration of the corrective actions taken, and actions planned, that were presented by the State at the January 22, 1997 MRB meeting, in a "Get-Well and Stay-Well Plan" to address and close out all recommendations by July 1, 1997, the review team revised their recommendation. The recommendation for probation was changed to a recommendation for a follow-up review of the State's radiation control program, to be conducted within one to one and one-half years from the date of the last IMPEP review, but not later than September 1997. The team also recommended that the State keep NRC apprised of the status of corrective actions and plans. The MRB concurred in the team's revised recommendation.

In the February 12, 1997 cover letter transmitting the final report of the July 1996 review, the State was also requested to provide NRC with (1) a copy of the actual Corrective Action Plan (Step I and II), and (2) a status report of resolution of the corrective actions and plans every two months.

By letter dated May 2, 1997, to Hugh L. Thompson, Jr., (Appendix C) then Acting Executive Director for Operations, and the Chairperson of the MRB, the State provided one response to the request for a status report every two months. The status report indicated that the corrective actions remained on schedule for completion by the July 1, 1997 "Get-Well Plan" end date. The report summarized the status of corrective actions and included information on the development of a major database program that could accommodate tracking and status of most of the program's information related to the State's material licensees. Attached to the report was a more definitive Gantt Chart that presented a schedule for completion of the various tasks. The schedule covered development of work on (1) the new database tracking system for inspections including reciprocity inspections, and procedures for inspection plans, including those completed by contractors, (2) a staff qualification manual drafted by a contractor, (3) completion of a licensing action prioritization procedure in January 1997 and continuing development of additional comprehensive administrative procedures, (4) annual supervisory accompaniments of inspectors, (5) use of NRC Manual Directive 8.8 for "Management of Allegations," (6) use of the draft "Handbook on Event Reporting in the Agreement States," and development of an event tracking database, (7) reporting on February 28, 1997 of all outstanding events identified during the 1996 IMPEP review, and the beginning of routine monthly event reporting on January 31, 1997, (8) compilation of all LLRW

training data for agency personnel, and (9) a revision to regulation 180 NAC 1-012.22, the State's Part 61 equivalent rule to low-level radioactive waste facilities that process or store waste, as well as disposal sites, with expected adoption by June 1997.

The State did not provide a bimonthly written status report for July 1997. During informal telephone discussions, the State continued to reiterate its expectation to complete the "Get-Well Plan" as scheduled. During discussion of the scheduling for the follow-up review, the team learned that several changes in management had occurred within the Department above the first line supervisor, and that procedures had not been completed. As part of the preparatory process for an IMPEP review, the team requested a written report of the current status of corrective actions and the changes in management. The State provided a status report on September 8, 1997 (Appendix C), that identified changes in management, staffing, and schedules. The September 8, 1997 status report is covered in greater detail in recommendation No. 6 of this report.

Results of the follow-up review of the State's response and resolution of the 15 recommendations encompassing the IMPEP common and non-common performance indicators are presented in Section 3 and Section 4. 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 Staffing and Training; (3) Technical Quality of Licensing Actions; (4) Technical Quality of Inspections; and (5) Response to Incidents and Allegations.

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

During the September 1997 follow-up review, the review team focused on four of the five factors in this indicator: inspection frequency, overdue inspections, initial inspection of new licenses, and timely dispatch of inspection findings to licensees. To evaluate these issues, the review team interviewed program management and staff, reviewed automated data, and examined the State's responses to the recommendations in the final report of the 1996 IMPEP review, which resulted in a finding of satisfactory with recommendations for improvement. The final report contained three recommendations for this indicator. The results of the follow-up review team's evaluation of the State's response to the three recommendations are presented below:

Recommendation 1

> The review team recommends that the managers responsible for the Nebraska Radioactive Materials Program establish an action plan or procedure to assure inspections are completed at the frequencies stated in the Nebraska Inspection Manual which is equal to the NRC's IMC 2800 and conduct reciprocity licensee inspections at the required frequencies stated in IMC 1220.

Current Status

In the State's May 2, 1997 corrective action status report the State indicated that it had (1) updated its database system with the appropriate inspection frequencies equal to IMC 2800, (2) developed a database tracking system from which each inspector could generate a report on his or her computer showing inspections coming due, (3) developed an inspection tracking system that included reciprocity requests and that allows the inspector to generate a report indicating which licenses will be available for inspection, and (4) revised its process to assign reciprocity inspections in accordance with frequencies stated in IMC 1220. In the September 8, 1997 status report the State reported only one overdue inspection and all past due and routine inspections were scheduled into the third quarter of 1998.

During the review, the team evaluated the computer tracking system and found that the new system greatly improved the oversight capabilities of the inspection process. The following list provides selected examples of reports that could be generated from the system.

- Pending Inspections for Twelve Months through September 6, 1997
- Inspections Completed from July 1996 to Current Date
- Specific Licensee Reports
- Reciprocity Inspections by Priority

The team evaluated the automated status reports, discussed clarifying issues with the Program Manager for Radioactive Materials, and found that the Program Manager could now identify overdue, past due and missed inspections, and take the necessary actions to address the needs of the inspection program in a timely manner. Discussions with the staff determined that they were knowledgeable in the use of the computer tracking systems for inspections. The follow-up review team found there were no overdue inspections, and all inspections due for inspection by the third quarter of 1998 were scheduled and assigned to an inspector. The State had performed 11 reciprocity inspections out of a total of 25 since the 1996 IMPEP review. The team found that the State does have adequate written procedures equivalent to IMC 2800 and 1220. On September 12, 1997 the State issued Radioactive Materials Procedure (RMP) No. 7.03, "Program Management - Routine Oversight," which outlines the frequencies of internal audits to assure inspections are being performed and includes a notation regarding supervisory accompaniments.

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

Recommendation 2

> The review team recommends that the managers establish an action plan or procedure for coordinating deviations from the inspection schedule between staff and management based on the risk of license operations, past performance and need to temporarily defer the inspections to address more urgent or critical priorities.

Current Status

In the State's May 2, 1997 corrective action status report, the State noted that "the inspection scheduling and the upper management stay-well procedures will both establish methodologies for coordinating deviations from the inspection schedule and rescheduling of missed inspections."

The team evaluated the automated status reports, discussed clarifying issues with the Program Manager, and found that management can now identify and manage the deviations from the inspection schedule. The team found that the State does have written procedures equivalent to IMC 2800 and 1220 which allow for extending or reducing the frequency of inspections. RMP No. 7.03 outlines the frequencies of internal audits to assure inspections are being performed. The Program Manager indicated that following the written procedures and through the automated daily, weekly, monthly and quarterly inspection status reports, he is aware of the inspection program status and can assure coordination of the deviations from the inspection schedule and rescheduling of missed inspections in a timely manner.

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

Recommendation 3

> The review team recommends that the managers organize a "Get-Well Plan" for rescheduling missed or deferred inspections, especially due to loss of senior staff; and establish a plan or methodology to assure initial inspections are performed within six months of issuance of the license, beginning licensed activities, or within one year of license issuance, whichever comes first, in accordance with the Nebraska Inspection Manual and NRC's IMC 2800.

Current Status

The State's May 2, 1997 corrective action status report stated that all new licenses issued are assigned an inspection date of six months following issuance. The licenses are conditioned to require the licensee to notify the State prior to commencement of licensed operations.

The team reviewed a sample computer report of New Licenses Issued since the July 1996 review, and compared it to the information in the State's September 8, 1997 status report. The team found that initial inspections of four of the five newly issued licenses are scheduled for the third and fourth quarters of 1997, which is within six months of the issue date of the license. The team also found that the State had contracted out 29 inspections; the results of which had been completed and documented. The team found that on August 21, 1997, the State issued RMP No. 7.04, "Program Management - Upper Management Oversight," which addresses loss of staff, staff qualifications and unplanned or increased workloads. The team evaluated the procedure and found it adequately outlines a "Get-Well Plan" for rescheduling missed or deferred inspections, especially due to loss of senior staff. The team also found that the State does have written procedures equivalent to IMC 2800 which address scheduling of initial inspections.

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

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

During the September 1997 follow-up review, the team considered all of the factors for this indicator: the radioactive materials program staffing level, staff training and qualification planning, management attention and review of program problems, and development of corrective action plans, when necessary. To evaluate these issues, the review team interviewed program management and staff, and considered the continuing backlog in licensing. The team also examined the State's responses to the recommendations in the final report of the 1996 IMPEP review, which resulted in a finding of satisfactory with recommendations for improvement. The final report contained three recommendations for this indicator. The results of the follow-up review team's evaluation of the State's response to the three recommendations are presented below:

Recommendation 4

> The team recommends that the qualifications of contractor personnel be tied to the contract as identified by the program manager or as accomplished by the LLRW program in NDEQ.

Current Status

In the State's May 2, 1997 corrective action status report, the State informed NRC that the inspection contract included a requirement for qualifications of the inspectors, and for the submission of an inspection plan for agency approval prior to each inspection.

The team found that Nebraska had adopted a model contract (which implements the recommendation) for guidance in negotiating future contracts. The model contract comprises Attachment 7.04-1, entitled "Draft Inspection Contract," to RMP No. 7.04, entitled "Program Management - Upper Management Oversight." The subject procedure was approved by James A. Wiley, Interim Director, Department of Regulation and Licensure, effective August 4, 1997. The team finds the contract clause of inspector qualifications to be an acceptable implementation of the recommendation.

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

Recommendation 5

> The team recommends that a written program for staff qualification, including retaining training records, be developed.

Current Status

The State's "Get-Well" corrective action plan stated that the recommendation had been adopted and that a qualification manual was in draft and would be implemented prior to July 1, 1997. The State's May 2, 1997 status report did not report on this item. In the State's September 8, 1997 status report, the State indicated that the manual had been completed and implemented effective September 3, 1997.

The team confirmed that the qualifications manual, RMP No. 6.01 was approved by James A. Wiley, Interim Director, Department of Regulation and Licensure, effective September 3, 1997. The Nebraska manual addresses basic training, advanced and specialized training, and continuing education, all by license category. A policy statement on training expresses the management position and commitment to technical staff training and qualification, and provides the general qualification procedure. Staff experience is addressed through a statement detailing the expected progress of technical staff in completing the training and qualification requirements.

RMP No. 6.02, also approved effective September 3, 1997, addresses training resources that may be used to complete the qualification requirements. An attachment to the RMP No. 6.02 incorporated the draft recommendations of the NRC/OAS Training Working Group. The team found that an adequate procedure for staff qualification and training has been adopted. The team recommends that the NRC review the results of the use of the new procedures at the next IMPEP review.

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

Recommendation 6

> The team recommends that the State develop comprehensive administrative procedures, sufficient to guide the day-to-day operation of the program in the event of another loss of senior staff. The procedures should include a formal process for bringing to the attention of upper management the increase of significant backlogs of licensing, inspection, or enforcement actions, or any other situation which increases the risk to public health and safety. Licensing procedures should include prioritization of licensing actions based upon identified factors, including health and safety significance, for new and previously received applications.

Current Status

The team noted that in the cover letter transmitting the final report of the 1996 IMPEP review, Nebraska was asked to report its progress in completing the corrective actions at bimonthly intervals. The first report was provided by the State on May 2, 1997. The State's May 2, 1997 corrective action status report reiterated that the State would develop and implement all procedures by July 1, 1997, as presented in the "Get-Well, Stay-Well" corrective action plan at the January 22, 1997 MRB meeting, and as adopted in the final report of the 1996 IMPEP review. In the status report the State indicated that:

> "Comprehensive administrative procedures are in the development stage. Currently, relevant NRC and Agreement State procedures, policies, and guidance documents are being gathered for use as reference in the preparation of program procedures. A licensing action prioritization procedure was completed in January, and all pending licensing actions are assigned a priority when logged [into a recently developed database]."

The State did not provide a written bimonthly status report for July 1997. During informal telephone discussions prior to July 31, 1997, the State continued to reiterate its expectation to complete the "Get-Well Plan" as scheduled. During discussion of the scheduling for the follow-up

review, the team learned that several changes in management had occurred within the Department above the first line supervisor, and that procedures had not been completed. As part of the preparatory process for an IMPEP review, the team requested a written report of the current status of corrective actions and the changes in management. The State provided a status report on September 8, 1997, that identified changes in management, staffing, and schedules. The report informed NRC that a new NHHS interim director had been appointed in July 1997, and that a new coordinator for the reorganized CHS team had been appointed in May 1997. The State informed NRC that one vacancy had been created by the reassignment of the regulations and licensing reviewer to another department at the end of August 1997, and included a time-line schedule for filling the vacant position. The report also included the following information: (1) an inspection schedule, (2) weekly management oversight meetings were continuing, and (3) a completely new milestone schedule Gantt Chart. The new chart information did not correlate to the information that was included in the previous May 2, 1997 chart, which made it very difficult to compare the previous status of specific issues to the current status of issues. The new chart indicated a current backlog of only one inspection and stated that the licensing backlog has been reduced but not eliminated (78 licensing actions still pending), and that most of the pending procedures (totaling 27) would be completed by the end of the third quarter 1997, with all procedures to be completed by the end of the fourth quarter 1997. In the new chart the State reported that 18 procedures would be completed by the end of the third quarter 1997 and that the remaining 9 procedures would be completed by the end of the year (1997). Additionally, the State reported in the cover letter with the chart that “comprehensive procedures should be available for use by January 1998.” The team found that the State had only completed 4 of the 27 procedures, one additional procedure was in draft, and work had begun on one other procedure. At the time of the follow-up review, the State had not developed a revised, realistic schedule as to when the remaining procedures would likely be completed.

Due to the team’s concerns regarding the discrepancies between the team’s findings and the status of “Get Well Plan” completion, inadequate communications, and the information provided by the State in their corrective action summary report, the team discussed the findings separately with the program manager, team coordinator, and acting division administrator. As a result of the discussions, the team concluded that the discrepancies were the result of (1) continuing changes in management that resulted in totally new management above the first level supervisor, (2) a relatively inexperienced first line-supervisor and staff, and (3) the State’s assumption that they could not renegotiate the “Get-Well Plan” completion date based on the State’s experience with other Federal agencies where any changes would most likely require public comment.

Based on the following observation, that nine of the 27 procedures were related to fees, billing and budgeting, and general licenses (as opposed to specific licenses), the team discussed a prioritization schedule for pending procedures. The team identified 18 procedures for actions supporting the technical elements of the materials program that address the problems which underlie the recommendation. In discussions with the Program Manager, the eight most critical of the remaining procedures (involving the review of applications for specific licenses, the conduct of materials inspections, and response to events) were identified.

The team also observed that effective procedures for the management of the licensing and inspection programs, centered around the computerized tracking system discussed elsewhere in this report, were in place and being used. The procedures, however, were not written down, even

in draft form. The State had thus not fully met its commitment to the NRC to complete and implement the procedures by July 1, 1997.

The team also found that the schedule for completion of the corrective actions as committed to at the MRB meeting was not achievable. The team believes this was due to overly optimistic assumptions and management inexperience in the Agreement State program, resulting in an underestimate of the time and resources required, rather than a continuation of the lack of upper management support identified during the July 1996 review. Current management support is demonstrated by the fact that the program received authorization for a new position and hired a new staff assistant, and is in the process of refilling a position opened by a personnel transfer on September 1, 1997, both despite the Department being over its authorized FTE limit and under a hiring freeze.

The team recommended at the exit briefing with the State that Nebraska develop a new schedule for the completion of the written procedures based on experience gained to date, to be provided within two weeks after the completion date of the onsite follow-up review.

NOTE: The State responded to Recommendation 6 above on October 1, 1997 (Appendix C), within the requested two-week time frame. The revised schedule indicated that all pending actions and procedures will be completed by December 31, 1998. The State and NRC also conducted a monthly telephone conference call on October 8 and November 5, 1997.

The team suggests that the State place a higher priority on procedures related to those items identified as most critical, followed by those procedures identified as supporting the technical elements of the program.

The team recommends that the State provide copies of the procedures to NRC as they are completed for review.

The team recommends that regular communications, both verbal and written, be scheduled and maintained during the completion period. The State is requested to provide monthly status reports by telephone. The State is also requested to continue to provide a corrective action status report every two months.

Based on these findings, the team considers this recommendation to remain open, with the above new suggestion and recommendations added.

3.3 Status of Pending Issues Identified under “Technical Quality of Licensing Actions”

The State was found to be satisfactory for this indicator and the review team did not identify any specific issues.

3.4 Status of Pending Issues Identified under “Technical Quality of Inspections

During the September 1997 follow-up review, the review team focused on three of six factors in this indicator: supervisory accompaniment of inspectors, quality of inspection field notes and promptness of supervisory review, and timeliness and appropriate closure of inspections

performed by contractor inspectors. The team also reviewed the final report of the 1996 IMPEP review, which resulted in a finding of satisfactory with recommendations for improvement for this indicator. The final report contained three recommendations for improvement in this area. The results of the follow-up team's evaluation of the State's response to the three recommendations are presented below:

Recommendation 7

> The review team recommends that the State consider for adoption a policy of annual supervisory accompaniments of all individuals who perform inspections for the Radioactive Materials Program.

Current Status

The State's May 2, 1997 corrective action status report stated "that annual supervisory accompaniments of inspection team members will be required in the qualifications manual that is being drafted."

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The team discussed annual supervisory accompaniments of inspectors with the Program Manager. The Program Manager stated that he had accompanied two of the staff inspectors since July 1996, but had not made a formal written report of these accompaniments. The team noted in its review of the previously cited RMP No. 7.03, "Program Management - Routine Oversight," that supervisory accompaniments are noted in the procedure and as an indicator in the Upper Management Quarterly Report. During review of RMP No. 6.01, entitled "Qualifications and Training - Qualifications Manual," issued September 3, 1997, the team found that the procedure states, "The Program manager will... accompany each lead inspector at least annually."

The team recommends that in following RMP No. 6.01 "Qualifications and Training - Qualifications Manual," that documentation of the accompaniment or other means of tracking that the accompaniment occurred should be pursued.

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

Recommendation 8

. The review team recommends that the State develop a plan or procedure to assure that field notes, as well as, reports, and enforcement letters are promptly reviewed, signed and dated by a supervisor within the recommended 30 day time frame for issuance of inspection findings.

Current Status

In the State's May 2, 1997 corrective action status report, the State indicated that the new database system allows tracking of each aspect of the inspection from due date to acknowledgment of licensee's response to a notice of violation. A database report is available at any time to program management showing the time line of each open inspection. The inspection procedures will outline the time line requirements that are coded into the database system and outline the management oversight necessary to ensure that these goals are met.

The team evaluated a sampling of inspection documentation in ten inspection cases. The team found documentation of a supervisory review in the field notes and that issuance of a letter forwarding the results of the inspections had been completed and issued on average within 30 days of the inspection. Inspection milestone dates were tracked in the new automated database tracking system. A sample database report covering Pending Inspection Completions, September 16, 1997, indicated that as of September 16, 1997 there were 23 inspections awaiting final completion. The team found that the State does not consider the inspection closed until either an inspection letter is sent, in the case of a clear inspection, or an acknowledgment letter is sent in response to the licensee's letter documenting corrective actions in the case of enforcement letters with a notice of violation or recommendation. The team noted that the quality of inspection documentation and the timeliness in issuance of inspection results has greatly improved.

Based on the follow-up review, the team considers this recommendation to be closed. (See Recommendation 3, page 16 of this report, for further guidance.)

Recommendation 9

> The review team recommends that the State perform an immediate review of all contractor field notes and draft enforcement letters in order to finalize and issue the findings of the remaining 22 inspections to the licensees involved.

Current Status

In the May 2, 1997 corrective action status report, the State noted that the inspections were completed as previously indicated in correspondence to NRC.

The team reviewed several of the contractor inspections performed prior to the July 1996 review and confirmed that these inspections had been reviewed by the Program Manager and completed. The team also reviewed a sample of the 29 contractor inspections performed since January 1997 and found that these were completed in a timely manner.

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

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

During the September 1997 follow-up review, the review team focused on six of the seven factors in this indicator: responsiveness, investigative procedures, corrective actions, follow up, compliance and notifications, as necessary. To evaluate this indicator, the team interviewed

program management and staff, evaluated sample case work and reviewed the State's response to the final report of the 1996 IMPEP review, which resulted in a finding of satisfactory with recommendations for improvement. The final report contained four recommendations for this indicator. The results of the follow-up review team's evaluation of the State's response to the four recommendations are presented below:

Recommendation 10

> The review team recommends revising the allegations procedures to incorporate key areas, i.e. documentation of any communications with the alleger, documentation of the inspection findings, interviewing techniques, etc., identified in NRC Manual Directive 8.8, Management of Allegations.

Current Status

The State's May 2, 1997 corrective action status report stated that "the program has used the key ideas of Management Directive 8.8 in dealing with recent allegations. These ideas will be incorporated into program allegation procedures."

The follow-up review team found that the Program Manager for Radioactive Materials is using the guidance contained in NRC Management Directive 8.8 in dealing with recent allegations. The Program Manager indicated that they plan to incorporate key ideas from Management Directive 8.8 into their own procedure, which has not yet been drafted. An evaluation of a few case files indicated that the State is using the guidance contained in Management Directive 8.8 to improve the quality of communicating, interviewing and documenting allegations. The State needs to complete development and implementation of a written procedure.

The team recommends that the State continue development and implementation of procedures to manage allegations and provide staff training so that all inspectors are knowledgeable in those procedures.

Based on these finding, the team considers this recommendation to remain open, with the above new recommendation added.

Recommendation 11

> The review team recommends that the staff use the draft "Handbook on Event Reporting in the Agreement States (Handbook)," published March 1995, for review and reporting of material events to NRC.

Current Status

The State's May 2, 1997 corrective action status report stated that the "Handbook on Event Reporting in the Agreement States" is currently being used by program staff and will be incorporated into the event reporting procedures."

The follow-up review team found that the Program Manager for Radioactive Materials is using the event reporting guidance contained in the NRC "Handbook," and was in the process of incorporating the "Handbook," and instructions for using the Nuclear Materials Events Database (NMED) into their own procedures. The staff had developed RMP No. 402, "Radioactive Material Events," which will provide guidance on monitoring and tracking of material events and will incorporate NRC's event reporting guidance. The proposed procedure was undergoing internal review.

Based on the follow-up review, the team considers this recommendation to be closed. (See Recommendation 3, page 16 of this report, for further guidance).

Recommendation 12

> The review team recommends establishment of comprehensive procedures for tracking, follow-up and close out of events involving the use of radioactive material covered under the Atomic Energy Act.

Current Status

The State's May 2, 1997 corrective action status report stated that "the program created an event database to track all possible material events. The event procedures will establish event follow up and close out procedures."

The follow-up review team found that the State has created a satisfactory database to track receipt, follow up, and close out material events. The database is a subset of a primary master database developed with Microsoft Access that can accommodate tracking most of the information related to the State's material licensees.

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

Recommendation 13

> The review team recommends that the State immediately begin reporting current material events to NRC and send in information on the three events identified during the review as reportable, that were not previously reported to NRC.

Current Status

The State's May 2, 1997 corrective action status report stated that the "program began routine monthly reporting on January 31, 1997 and reported all previous reportable events on February 28, 1997."

The follow-up review team found that on February 28, 1997, the State did provide NRC information on three events that had been identified during the 1996 IMPEP review as not having been reported. The team also found that the State is continuing to provide information on the occurrence of any reportable events on a monthly basis in accordance with NRC guidance.

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

4.0 NON-COMMON PERFORMANCE INDICATORS

The team reviewed two non-common performance indicators that applied to the Nebraska program, Legislation and Regulations and Low-Level Radioactive Waste Disposal Program.

4.1 Status of Pending Issues Identified Under Legislation and Regulations

During the September 1997 follow-up review, the team focused on a regulation issue related to compatibility. The final report had one recommendation.

Recommendation 14

> In accordance with the State's commitment, the team recommends that Nebraska amend 180 NAC 1-012.22 to remove its applicability to waste treatment and storage facilities.

Current Status

In response to the team's request for clarification regarding application of the public dose limits in the State's equivalent regulations to 10 CFR Part 61, the State responded in a letter dated December 13, 1996, that they did not currently have any brokers, treatment facilities, or storage facilities to which this regulation applied. In accordance with the Division 1 compatibility requirement designation (now Category A) the Department expressed its intent to amend the regulation. The State included a copy of the proposed amendment.

It was determined by NRC that if the draft rule were adopted without change, it would be compatible. At the MRB meeting on January 22, 1997, the State reported that the revision to the regulation was “in process.” In the May 2, 1997 status report, the State reported that the proposed rule received no negative comment at public hearing. The rule was expected to be adopted in June 1997.

The team found that the rule was adopted without change and became effective on September 17, 1997. The team found that the delay in adoption from June to September was due to the politically sensitive nature of the rule, resulting in heightened concern by the Governor as the promulgating official.

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

4.2 Status of Pending Issues Identified Under Low-Level Radioactive Waste Disposal Program

During the 1997 follow-up review, the team focused on the documentation of the qualifications of the technical staff and contractors. The team reviewed the final report of the 1996 IMPEP review which resulted in a finding of satisfactory for this indicator. The final report had one suggestion.

Recommendation 15

> The team suggested that the LLRW program assemble training documentation for individual staff and contractors and develop a consolidated training record to enable assessment of the progress of training across the entire program.

Current Status

The State's May 2, 1997 corrective action status report stated that "the LLRW program has compiled all the training it provided to the consultant review team members. The LLRW program staff will be gathering training data for Agency personnel to be included and maintained in one training documentation spreadsheet."

The team found that the State had compiled a training history for State staff members. A computer database had been established and the training records for the staff had been entered. There was, however, no information in the database related to contractor personnel. During discussion with the LLRW program managers, it was agreed that adding the detailed training records of the contractor personnel to the database would be of limited value since most of the contractor work is completed. The NDEQ and CHS program managers agreed to add information to the database showing contractor personnel attendance at training sessions sponsored by the State. The team notes that the complete training records for individual contractor personnel remain available in the contractor personnel files.

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

5.0 **SUMMARY**

The follow-up review team found the State's performance in responding to and resolving the 15 recommendations by the planned scheduled completion date of July 1, 1997, to be satisfactory with the exception of Recommendation 6 and 10. Recommendation 6 discussed the need for the State to develop comprehensive administrative and technical procedures. This area was identified as one of the primary root causes for the significant deficiencies found in the program during the previous 1996 IMPEP review. Recommendation 10 discussed the need to develop procedures for responding to allegations. The team found that the inspection backlog had been eliminated, the licensing backlog had been reduced but not eliminated (78 actions pending), and the State had implemented a computerized tracking system that provides much needed support to the overall materials program, and had received one additional FTE during a hiring freeze. However, the team also found that a significant number of procedures (23 out of 27) identified by the State for development had not been written, completed and signed off. The staff had not developed an estimated schedule for completion of the remaining 23 procedures at the time of the review. Although the team found that the State did not adequately communicate the status of the resolution of corrective actions, the team concluded that overly optimistic assumptions and Agreement State program inexperience by program management and staff contributed to the underestimate of the time and resources required to complete the "Get-Well Plan," rather than a continuation of the lack of upper management support as seen during the 1996 review. The team found the current staff is qualified, but the team observed that the program has a relatively

inexperienced staff, a heavy reliance on the first-level supervisor, lack of written procedures for guidance, and totally new management above the first-level supervisor.

The follow-up review team recommended, and the MRB concurred, that the Nebraska program remains adequate to protect public health and safety but needs improvement, and compatible with NRC's program.

Due to the fact that Recommendation 6 and 10 remain open, and that Recommendation 6 was identified as especially significant during the 1996 IMPEP review, and the fact that the Nebraska radiation control program staff and management have a few years or less of Agreement State program experience, the team recommended that an IMPEP review be scheduled within one year of the date of this follow-up review. The MRB considered and concurred with the review team's recommendation.

Below is a summary list of recommendations and one suggestion, as mentioned earlier in the report, for consideration by the State and NRC.

Recommendations:

1. The team recommended at the exit briefing with the State that Nebraska develop a new schedule for the completion of the written procedures based on experience gained to date, to be provided within two weeks after the completion date of the onsite follow-up review. (Section 3.2)

2. The team recommends that the State provide copies of the procedures to NRC as they are completed for review. (Section 3.2)

3. The team recommends that regular communications, both verbal and written, be scheduled and maintained during the completion period. The State is requested to provide monthly status reports by telephone. The State is also requested to continue to provide a corrective action status report every two months. (Section 3.2)

4. The team recommends that in following RMP No. 6.01 "Qualifications and Training-Qualifications Manual," that documentation of the accompaniment or other means of tracking that the accompaniment occurred should be pursued. (Section 3.4)

5. The team recommends that the State continue development and implementation of procedures to manage allegations and provide staff training so that all inspectors are knowledgeable in those procedures. (Section 3.5)

Suggestion:

1. The team suggests that the State place a higher priority on procedures related to those items identified as most critical, followed by those procedures identified as supporting the technical elements of the program. (Section 3.2)

NRC:

The team recommends that the NRC review the results of the use of the new procedures at the next IMPEP review. (Section 3.2)

LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	NHHS Organizational Chart
Appendix C	Nebraska Status Reports, May 1997, September 1997 and October 1997
Attachment 1	Nebraska's Response to Follow-up Review Findings

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Patricia M. Larkins, OSP	Team Leader Technical Quality of Licensing Actions Response to Incidents and Allegations
Jenny Johansen, RI	Status of Materials Inspection Program Technical Quality of Inspections
Richard Blanton, OSP	Technical Staffing and Training Legislation and Regulations Low Level Radioactive Waste

APPENDIX B

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM

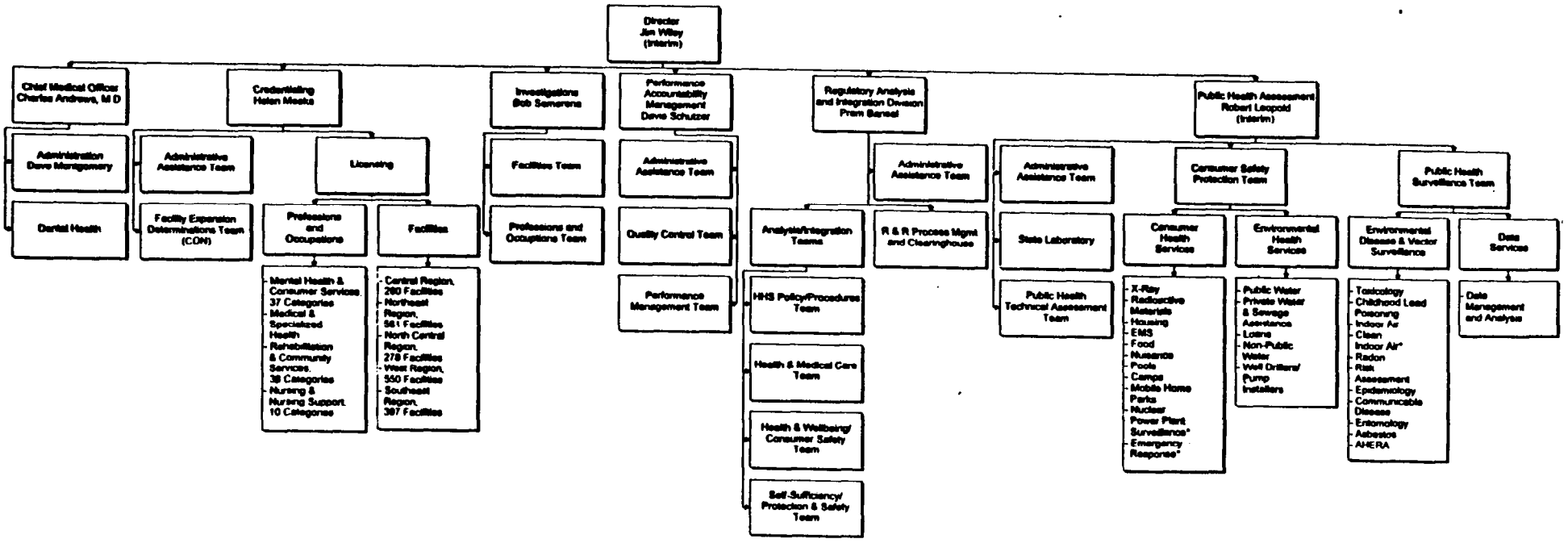
DEPARTMENT OF REGULATION AND LICENSURE

AND

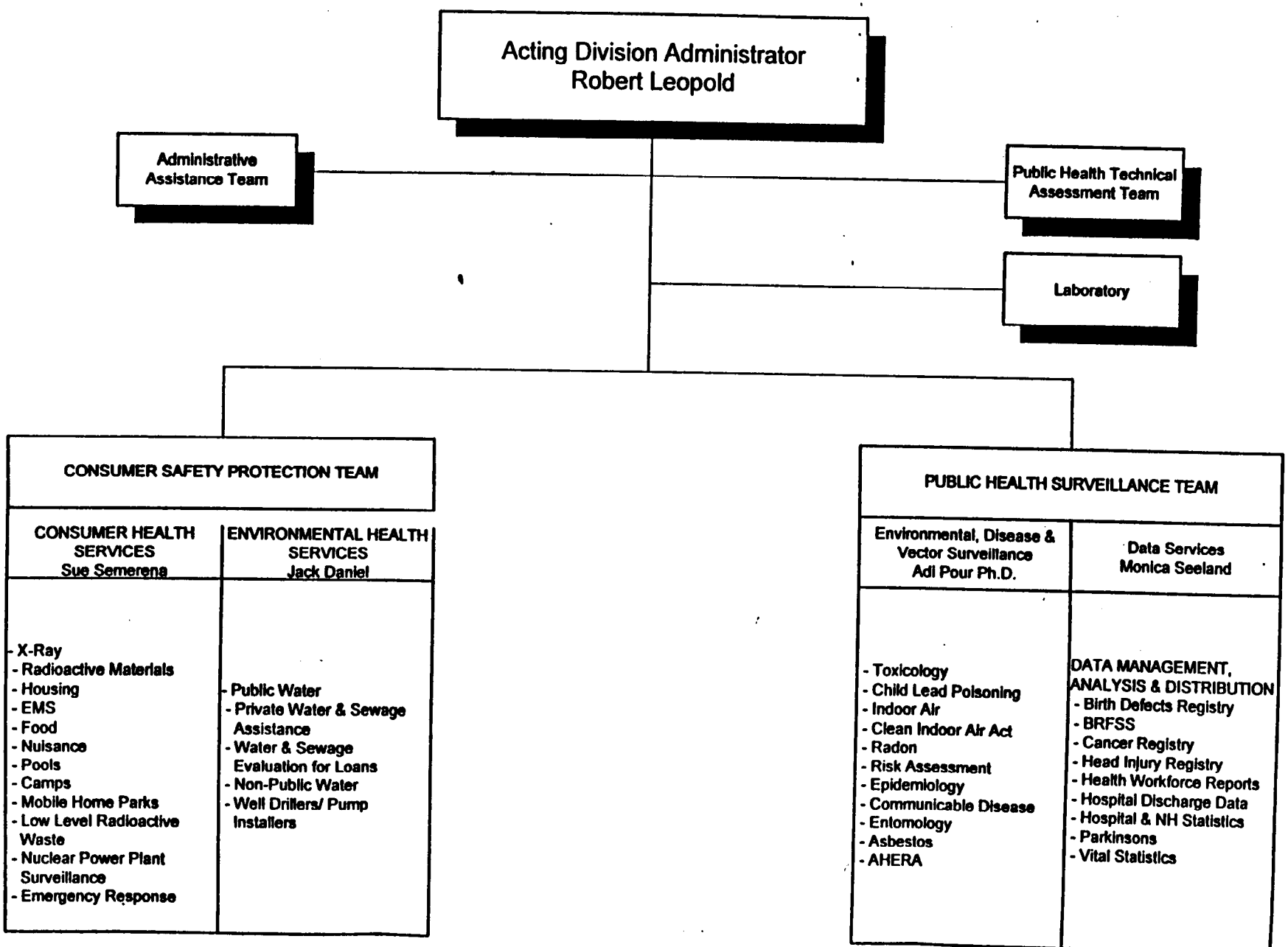
PUBLIC HEALTH ASSESSMENT DIVISION

ORGANIZATION CHART

Nebraska Health and Human Services System
Regulation and Licensure



Public Health Assessment Division



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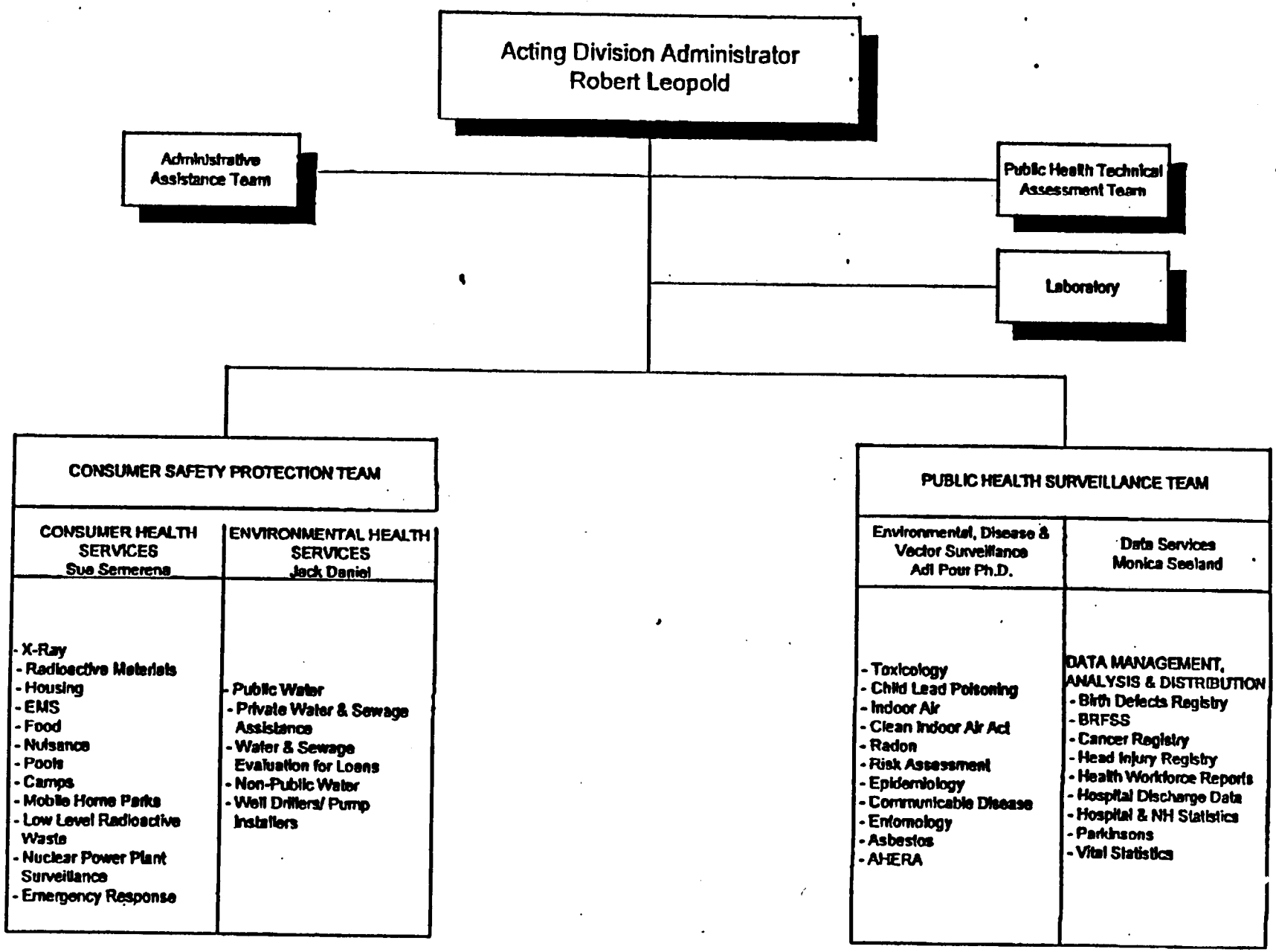
Public Health Assessment Division



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