

December 20, 2002

Mr. Robert Leopold, Director  
Public Health Assurance Division  
Regulation and Licensure  
Nebraska Health and Human Services System  
301 Centennial Mall South, 3<sup>rd</sup> Floor  
Lincoln, NE 68509

Dear Dr. Leopold:

On December 16, 2002, the Management Review Board (MRB) met to consider the proposed final Integrated Materials Performance Evaluation Program (IMPEP) report on the Nebraska Agreement State Program. The MRB found the Nebraska program adequate to protect public health and safety and compatible with the Nuclear Regulatory Commission's program. No recommendations were made for the State by the review team.

Based on the results of the current IMPEP review, the next full review will be in approximately four years.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review. We appreciate your continued support for the Radiation Control Program and the excellence in program administration demonstrated by your staff as is reflected in the team's findings. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

**/RA/ Paul Lohaus for**  
Carl J. Paperiello  
Deputy Executive Director  
for Materials, Research and State Programs

Enclosure:  
As stated

cc: Julia A. Schmitt, Program Manager  
X-Ray/Radioactive Materials/Emergency Response

Pearce O'Kelley, SC  
OAS Liaison to MRB

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM  
REVIEW OF NEBRASKA AGREEMENT STATE PROGRAM

SEPTEMBER 17-20, 2002

**FINAL REPORT**

U.S. Nuclear Regulatory Commission

## 1.0 INTRODUCTION

This report presents the results of the review of the Nebraska Agreement State program. The review was conducted during the period September 17-20, 2002, by a review team consisting of technical staff members from the Nuclear Regulatory Commission (NRC) and the Agreement State of Massachusetts. Team members are identified in Appendix A. The review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of a Final General Statement of Policy," published in the Federal Register on October 16, 1997, and the November 5, 1999, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the review, which covered the period of September 26, 1998 to September 20, 2002, were discussed with Nebraska management on September 20, 2002.

A draft of this report was issued to Nebraska for factual comment on October 24, 2002. The State responded by letter dated December 3, 2002. The Management Review Board (MRB) met on December 16, 2002 to consider the proposed final report. The MRB found the Nebraska radiation control program was adequate to protect public health and safety and compatible with NRC's program.

The Nebraska Agreement State program is administered by the Emergency Response, Radioactive Materials and X-Ray Program (the Program) in the Department of Health and Human Services (the Department). The Program Manager reports to the Section Administrator for Consumer Health Services, who reports to the Division Director for Public Health Assurance, who in turn reports to the Director of Regulation and Licensure. The Director of Regulation and Licensure is a member of the Policy Cabinet for the Health and Human Services System that reports to the Governor. Organization charts for the Department and the Program are included in Appendix B. At the time of the review, the Nebraska Agreement State program regulated 141 specific licenses authorizing Agreement materials. The 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.

In preparation for the review, a questionnaire addressing the common and non-common performance indicators was sent to the Program on June 5, 2002. The Program provided a response to the questionnaire on August 26, 2002. A copy of the questionnaire response can be found on NRC's Agencywide Document Access and Management System using the Accession Number ML022980351.

The review team's general approach for conduct of this review consisted of: (1) examination of Nebraska's responses to the questionnaire; (2) review of applicable Nebraska statutes and regulations; (3) analysis of quantitative information from the radiation control program licensing and inspection data base; (4) technical review of selected licensing and inspection actions; (5) field accompaniments of a Program inspector; and (6) interviews with staff and management to answer questions or clarify issues. The review team evaluated the information that it gathered against the IMPEP performance criteria for each common and applicable non-common performance indicator and made a preliminary assessment of the Nebraska Agreement State program's performance.

Section 2 below discusses the State's actions in response to recommendations made following the previous IMPEP review. Results of the current review for the IMPEP common performance indicators are presented in Section 3. Section 4 discusses results of the applicable non-common performance indicators, and Section 5 summarizes the review team's findings.

## 2.0 STATUS OF ITEMS IDENTIFIED IN PREVIOUS REVIEWS

During the previous IMPEP review, which concluded on September 25, 1998, six recommendations were made and transmitted to Gina Dunning, Director, Regulation and Licensure, Nebraska Health and Human Services System on December 30, 1998. The team's review of the current status of the recommendations is as follows:

1. Because of the importance of the development and implementation of critical procedures relative to the performance of the staff and the performance indicators, the team recommends that the State initiate appropriate actions needed to complete the development and implementation of the previously identified procedures that are critical to the performance of the program. The State should provide the revised schedule to NRC and copies of the procedures as they are completed. (Section 2.0)

Current Status: The State revised the schedule and provided copies of the procedures important to the performance of the program to the NRC for review. All applicable procedures have been completed and reviewed by the NRC. This recommendation is closed.

2. The team recommends that staff who conduct independent inspections and/or license reviews of pool irradiators, teletherapy and brachytherapy complete the irradiator course and teletherapy and brachytherapy courses. (Section 3.3)

Current Status: All staff have completed the teletherapy/brachytherapy course and two inspectors have also successfully completed the irradiator course. This recommendation is closed.

3. The review team recommends that the State add the inventory license condition to all applicable licenses, within the next year. (Section 3.4)

Current Status: The license condition has been added to all applicable licenses reviewed by the team. This recommendation is closed.

4. The review team recommends that the allegation records clearly state the basis for the findings and outcome of the investigation, and that the alleged be informed of the outcome of the investigation. (Section 3.5)

Current Status: The allegation procedure has been completed and reviewed by the NRC. The procedure includes provisions for documenting the basis for findings and outcome of investigation and informing the alleged of the outcome. The review team noted that both allegations reviewed followed the Program's procedure. This recommendation is closed.

5. The review team recommends that the Program management effect rulemaking activities to ensure that NRC rule changes are adopted within the specified 3 year time period. (Section 4.1.2)

Current Status: The Department adopted eight NRC amendments by rulemaking that became effective in December 1998 and May 2000. The only NRC amendment not adopted within the three-year period has been drafted and is currently undergoing legal review. Final adoption is expected in 2003. This recommendation is closed.

6. The team recommends that the Nebraska Department of Environmental Quality prepare, or adopt by reference, a procedure for managing allegations. (Section 4.3.4)

Current Status: In January 1999, the Governor signed legislation that withdrew the State from the Central Interstate Low-Level Radioactive Waste Compact. Subsequently, the low-level radioactive waste (LLRW) programs in the Department and the Nebraska Department of Environmental Quality were terminated and the staffs reassigned. Consequently, the Department of Environmental Quality no longer has a need for an allegation procedure. This recommendation is closed.

During the 1998 review, two suggestions were made for the Program to consider. The review team determined that the Program considered the suggestions and took appropriate actions.

### 3.0 COMMON PERFORMANCE INDICATORS

IMPEP identifies five common performance indicators to be used 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 Materials Inspection Program

The review team focused on four factors in reviewing the status of the materials inspection program: inspection frequency, overdue inspections, initial inspections of new licensees, and timely dispatch of inspection findings to the licensees. The review team's evaluation is based on the Program's questionnaire responses relative to this indicator, data gathered from reports generated from the licensee database, examination of completed licensing and inspection casework, and interviews with the management and staff.

The procedure entitled "Radioactive Materials Program Procedure No. 3.01," dated February 19, 1999, establishes the basis for the State's inspection program. This procedure follows the guidelines established in the NRC Inspection Manual Chapter (IMC) 2800.

The licensee database contains sufficient information for proper management of the inspection program. The Program performs approximately 50 inspections per year. The review team noted that the Program is performing inspections of materials licensees on an unannounced basis, except for initial inspections.

During the review, the team noted that one core inspection was conducted two months late. The Program Manager informed the team that the inspection of this industrial radiography licensee was delayed in order to observe the licensee performing work. The licensee did not have material or personnel in the State and did not perform work during the winter months. The licensee was inspected during their first use of licensed material in the Spring. The team found this approach acceptable.

During the review, the team noted that eight initial inspections were conducted late during the first half of the review period, 1998-1999. The Program has since established procedures for ensuring timely initial inspections. The Program reviews the status of each initial license biweekly and periodically calls the licensee during the first six months following license issue. New licensees are required by license condition to inform the Agency in writing when activities authorized by the license are initiated. If material is not received during the first six months, the periodic phone calls continue and an inspection is scheduled during the next six-month period. There were 23 initial inspections performed from January 2000 to September 2002, all within the scheduled intervals for new licensees. The Program currently has no overdue initial inspections.

The Program does not allow possession of materials in the State under reciprocity without a written request, the completion of a reciprocity license checklist and the payment of a fee. The Program maintains a data base of recurring reciprocity licensees as well as one time reciprocity licensees to aid in the management of these licensees. The Program uses this data base to maintain a daily list of all of the reciprocity licenses operating in the State and to schedule inspections. During the review, the review team noted that all the inspections of Priority 1, 2 and 3 licensees granted reciprocity met the goals indicated in June 2002 revision to IMC 1220.

Fifteen inspection files were reviewed for timeliness for issuing inspection findings. All inspection reports are signed by the inspector except for those involving escalated enforcement which are signed by the Department's legal council. For the sample of reports examined by the review team, all inspection reports were signed and transmitted within 30 days.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska's performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

### 3.2 Technical Quality of Inspections

The team evaluated the inspection reports, enforcement documentation, and inspection field notes, and interviewed inspectors for 20 materials inspections conducted during the review period. The casework reviewed included inspections performed by six different materials license inspectors. Inspection casework reviewed covered inspections of various types including: industrial radiography; nuclear medicine, high dose rate remote afterloading (HDR) therapy; fixed and portable gauges; mobile nuclear medicine; broad scope academic and medical; educational, instruction only; irradiator, self-shielded less than 10,000 curies; panoramic pool irradiator; and reciprocity (service, industrial radiography, and well logging).

Appendix C lists the inspection casework files reviewed for completeness and adequacy with case-specific comments.

Based on the casework file reviews, the review team found that routine inspections covered all aspects of a licensee's radiation protection program. Inspection reports were thorough, complete, consistent, and of high quality, with sufficient documentation to ensure acceptable performance with respect to health and safety by the licensee. The documentation adequately supported the cited violations, recommendations made to licensees, unresolved safety issues, and discussions held with the licensee during exit meetings. Team inspections were performed when appropriate.

During the review period, the Program Manager accompanied all individuals who performed materials inspections. The accompaniment reports contained sufficient details to document the areas covered. The accompanied inspector is provided a copy of the accompaniment report in his personnel file and receives an oral report of his performance.

The review team accompanied one materials inspector on June 26 and 27, 2002. The accompaniment included inspections of facilities licensed for portable gauges and nuclear medicine and HDR. The facilities inspected are identified in Appendix C. During the accompaniments, the inspector demonstrated appropriate performance based inspection techniques and knowledge of the regulations. The inspector was well prepared and thorough in his reviews of the licensees' radiation safety programs. The inspections were adequate to assess radiological health and safety at the licensed facilities.

The Program maintains a sufficient number and variety of survey instruments to perform radiological surveys of materials licensees as well as for responding to incidents and emergency conditions. The review team examined the Program's instrumentation and observed that the survey instruments were calibrated and operable. Inspectors obtain calibrated instruments from the office for each inspection. The Program contracts several licensed calibration service companies to perform the calibration of survey instruments on an annual basis.

The Program receives support from local university radiation safety offices, which can perform sample counting and assay services. In addition, the Program has contracted with Environmental, Inc. Midwest Laboratory, Northbrook, Illinois, for analyses of radiological samples. Discussions with Program staff established that the support is timely and dependable.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Inspection, be found satisfactory.

### 3.3 Technical Staffing and Training

Issues central to the evaluation of this indicator include the Program's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate these issues, the review team examined the Program's questionnaire responses relative to this

indicator, interviewed Program management and staff, reviewed job descriptions and training records, and considered any possible workload backlogs.

Program staffing was relatively stable over the review period. Two staff members left and one staff member transferred to the x-ray program. The staff consists of experienced personnel. All of the technical staff have bachelor degrees. The materials program has four technical positions, including the Program Manager, as noted in Appendix B. Currently, the Program has no vacant positions.

In addition to the four materials staff members, the Program has two x-ray inspectors, one health physics assistant, and one clerical position. The Program Manager reports to the Consumer Health Services Section Administrator. The Section Administrator spends about 20% of her time in radioactive materials licensing and inspection activities. The review team noted that the Program has experienced stable funding during the review period. Licensee fees support the program.

Training and qualification requirements for the radioactive materials staff are established in a procedure dated February 2, 1999. The procedure sets forth essentially the same training and qualification recommendations developed by the IMC 1246. Inspector requirements include NRC, or equivalent, core training courses when available. Inspectors are also required to be accompanied by a senior staff member on an inspection prior to authorizing the inspector to perform an independent inspection.

All technical staff members have taken the NRC courses deemed appropriate for their tasks. In addition, the review team noted that the Program Manager has attended several NRC training courses. The training records demonstrate that program management is committed to training for the staff. The review team concluded that the Program has a well balanced staff, and a sufficient number of trained personnel to carry out regulatory duties.

The Nebraska Board of Health reviews proposed rules and regulations for the use of radioactive material as part of their duties. Under the State's law, members are required to declare in writing any matter requiring action or decision that may cause a potential conflict. A member may abstain from activities in which the potential conflict exists.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

### 3.4 Technical Quality of Licensing Actions

The review team interviewed license reviewers, evaluated the licensing process, and examined licensing casework for 15 specific licenses. Licensing actions were reviewed for completeness, consistency, proper radioisotopes and quantities, qualifications of authorized users, adequate facilities and equipment, adherence to good health physics practices, financial assurance, operating and emergency procedures, appropriateness of the license conditions, and overall technical quality. The casework files were also reviewed for timeliness, use of appropriate deficiency letters and cover letters, reference to appropriate regulations, product certifications, supporting documentation, consideration of enforcement history, pre-licensing

visits, supervisory review as indicated, and proper signatures. The files were checked for retention of necessary documents and supporting data.

The licensing casework was selected to provide a representative sample of licensing actions which were completed during the review period. The cross-section sampling focused on the new licenses, amendments, renewals, and licenses terminated during the review period. The sampling included the following types: wet storage panoramic irradiator, self-shielded irradiator, stereotactic surgery (gamma knife), academic broad scope, research and development, manufacturing, industrial radiography, portable gauge, nuclear medicine, brachytherapy, mobile nuclear medicine, nuclear pharmacy, and teletherapy. Licensing actions reviewed included three new, five renewals, five amendments and two termination files. A listing of the casework licenses evaluated with case specific comments can be found in Appendix D.

Overall, the review team found that the licensing actions were thorough, complete, consistent, and of high quality with health and safety issues properly addressed. License tie-down conditions were stated clearly, backed by information contained in the file, and inspectable. The licensee's compliance history was taken into account when reviewing renewal applications and amendments. The exemptions noted in the questionnaire responses were determined to be appropriate and well documented by license conditions.

Licensing actions are assigned to one of the license reviewers along with a priority based on the type of action. Once the reviewer completes the action, a second review is performed by one of the other license reviewers. Each licensing action is documented on a "License Action Review Record" which includes detailed preparer and reviewer notes, a description of the action, correspondence included in the licensing action, and administrative information. The Program generates licenses utilizing an internally developed database with standardized conditions and format. All licenses are signed by either the Program Director or the Section Administrator. The State issues licenses for a five-year period under a timely renewal system, utilizes internally developed licensing guides (supplemented by NRC licensing guides) and policies as appropriate, uses standard licensing conditions, and issues a complete license for each licensing action.

A review of termination actions taken over the review period showed that nearly all of the terminations were for licensees possessing only sealed sources or for uses of radiopharmaceuticals with short half lives. The review team found that terminated licensing actions were well documented, showing appropriate transfer records or appropriate disposal methods and records, confirmatory surveys, and survey records. In discussions with the Program Manager, the review team noted that there were no major decommissioning efforts underway with regard to Agreement material in Nebraska.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

### 3.5 Response to Incidents and Allegations

In evaluating the effectiveness of the Program's actions in responding to incidents, the review team examined the Program's responses to the questionnaire relative to this indicator, reviewed the incident reports for Nebraska in the Nuclear Materials Event Database (NMED) against those contained in the Program's files, and evaluated reports and supporting documentation for 12 incidents. A list of the incident casework examined with case-specific comments is included in Appendix E. The review team also reviewed the Program's response to two allegations involving radioactive material. One allegation was referred to the Program by the NRC during the review period.

The incidents selected for review included the following event categories: loss of control (lost, abandoned, or stolen radioactive material), radiation overexposure, transportation, equipment problems, and medical events. The review team found that the Program's response to incidents was complete and comprehensive. Initial responses were prompt and well-coordinated, and the level of effort was commensurate with the health and safety significance. The Program dispatched inspectors for onsite investigations when appropriate, and took suitable enforcement and follow-up actions.

The responsibility for initial response and follow-up actions to materials incidents may be assigned to any member of the materials program. Upon receipt, staff reviews the report, decides on the appropriate response, and gives the report a unique tracking number. Documentation related to an incident is placed in the appropriate license file.

The review team identified 12 incidents in NMED for Nebraska during the review period. The Program's incident procedure adopted the NRC's "Handbook on Nuclear Material Event Reporting in the Agreement States" reporting requirements for incidents. The review team noted that all events (requiring 24-hour notification) and routine and/or event updates (requiring 30-day notification) were reported to the NRC Operations Center or to NMED.

It was noted that the Program received and was using the latest NMED software by all staff members who had completed the new NMED software training. The Program uses the NMED software to track all radioactive material incidents, including non-Agreement material events. However, the review team found that 10 Agreement material events and four non-Agreement material events reported to the NMED contractor during the review period were not in the database. Nine of the Agreement material events not entered were lost exit signs, and one was a lost gauge. Three non-Agreement material events were lost generally licensed radium sources and one was a stolen x-ray fluorescence device containing cobalt-57. All events are required to be entered into NMED by the contractor if provided by the State in accordance with Commission policy. In addition, it was noted that there were many errors in the information entered into the database by NRC's contractor (e.g., wrong event dates, wrong site of event, and missing information, etc.). The review team recommends that NRC's Office of Nuclear Material Safety and Safeguards review the contractor's procedure for inputting NMED data and review the database information for accuracy and completeness.

In evaluating the effectiveness of Nebraska's actions responding to allegations, the review team examined the Program's questionnaire responses relative to this indicator, and the Program's Procedure No. 4.01, "Management of Allegations." The casework for two

allegations was reviewed, one was referred to the State by the NRC and one was reported directly to the State. The Program evaluates each allegation and determines the proper level of response. The review of the casework and the files indicated that the Program took prompt and appropriate action in response to the concerns raised. Each of the allegations reviewed were appropriately closed, and the allegor was informed of the results. There were no performance issues identified from the review of the casework documentation.

The review team noted that Nebraska's Public Records Law requires that all public documents be made available for inspection and copying unless specifically exempted from disclosure. The State makes every effort to protect an allegor's identity, but it cannot be guaranteed. The State has a "Nondisclosure Statement" that is provided to the allegor when possible, otherwise the allegor is informed by phone or letter of the degree to which his/her identity can and will be protected.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska's performance with respect to the indicator, Response to Incidents and Allegations, be found satisfactory.

#### 4.0 NON-COMMON PERFORMANCE INDICATORS

IMPEP identifies four non-common performance indicators to be used in reviewing Agreement State Programs: (1) Legislation and Program Elements Required for Compatibility; (2) Sealed Source and Device Evaluation Program; (3) Low-Level Radioactive Waste Disposal Program; and (4) Uranium Recovery Program. Nebraska's Agreement does not authorize regulation of uranium recovery activities, so only the first three non-common performance indicators were applicable to this review.

##### 4.1 Legislation and Program Elements Required for Compatibility

###### 4.1.1 Legislation

In addition to their response to the questionnaire, the State provided the review team with the opportunity to review copies of legislation that affect the radiation control program. The currently effective statutory authority for the Department is contained in Nebraska Radiation Control Act 71-3501 to 71-3519. The Department of Health and Human Services, Regulation and Licensure, is the State's radiation control agency. The review team noted that two pieces of legislation affecting the radiation control program were passed during the review period, LB-93 and LB-1021.

###### 4.1.2 Program Elements Required for Compatibility

The Nebraska Regulations for Control of Radiation, Title 180, Nebraska Administrative Code, applies to all ionizing radiation. Nebraska requires a license for possession and use of all radioactive material including naturally occurring materials, such as radium, and accelerator-produced radionuclides. Nebraska also requires registration of all equipment designed to produce x-rays or other ionizing radiation. A copy of the effective Nebraska regulations, including the last amendments which became effective as of July 22, 2001 was given to the review team.

The review team examined the State's administrative rulemaking process and found that the process takes approximately 12 months from the development stage to the final filing with the Secretary of State, after which the rules become effective in five days. The process includes the development stage, public hearing stage, approval stage, and the filing stage. All rules and regulations for adoption must be adopted in accordance with the Administrative Procedures Act, Section 84-901- 84-920 et seq. of the Nebraska Revised Statutes, signed by the Governor, then filed with the Secretary of State. The public, the NRC, other agencies, and all potentially impacted licensees and registrants are offered an opportunity to comment during the process. Comments are considered and incorporated as appropriate before the regulations are finalized. The State cannot adopt other agency regulations by reference; however, the State can adopt other requirements such as Title 10 of the Code of Federal Regulations by attaching the specific regulation, with the effective date to the State's proposed regulations during the adoption process. The State has the authority to issue legally binding requirements (e.g., license conditions) in lieu of regulations until compatible regulations become effective.

The review team evaluated the Program's responses to the questionnaire, reviewed the status of regulations required to be adopted by the State under the Commission's adequacy and compatibility policy and verified the adoption of regulations with data obtained from the Office of State and Tribal Program's (STP) State Regulation Status Data Sheet. Since the previous IMPEP review, the Department adopted eight amendments in one rule package that became effective in May 2000. The review team found one amendment, "Deliberate Misconduct by Unlicensed Persons, (63 FR 1890; 63 FR 13773)," was not adopted within the three-year time frame established in STP's Management Directive 5.8. The adoption of this NRC amendment required changes to the State's statute and legislative approval. Legislative approval was delayed a year. The State has drafted regulations to meet the amendment requirements and the rule is currently under review by the State's legal counsel. The State plans to send a draft copy of the rules to STP for review during the public comment period. The review team reviewed the draft rule and it appears to meet the adequacy and compatibility requirements as established in STP Procedure SA-200.

During the review, the team noted that the Program had not submitted five of their adopted final regulations to NRC for review. The review team reviewed the final rules and they appear to meet the adequacy and compatibility requirements as established in STP Procedure SA-201. Program management agreed to submit these amendments for a review in a timely manner. In their response to the draft report, the Program noted that the five adopted final regulations had been sent to the NRC for review.

The Program will need to address the following six regulations in upcoming rulemakings or by adopting alternate legally binding requirements:

- ! "Respiratory Protection and Controls to Restrict Internal Exposures," 10 CFR Part 20 amendment (64 FR 54543; 64 FR 55524) that became effective February 2, 2000.
- ! "Energy Compensation Sources for Well Logging and Other Regulatory Clarifications," 10 CFR Part 39 amendment (65 FR 20337) that became effective May 17, 2000.

- ! “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendments (65 FR 63749) that became effective January 8, 2001.
- ! “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162) that became effective February 16, 2001.
- ! “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298) that became effective April 5, 2002.
- ! “Medical Use of Byproduct Material,” 10 CFR 20, 32, and 35 amendments (67 FR 20249) that became effective October 24, 2002.

Based on IMPEP evaluation criteria, the review team recommends that Nebraska’s performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, be found satisfactory.

#### 4.2 Sealed Source and Device (SS&D) Evaluation Program

During the review period, no SS&D certificates were issued by the Program and there are currently no manufacturers of sealed sources or devices in the State. The review team did not evaluate this indicator further.

#### 4.3 Low-Level Radioactive Waste (LLRW) Disposal Program

At the time of the last IMPEP review, Nebraska was the designated host State in the Central Interstate Low-Level Radioactive Waste Compact (the Compact) for the LLRW disposal facility. In December 1998, the State formally denied the application for the disposal facility based on the hydrological condition of the site and the weak financial condition of the site operator (U.S. Ecology). In January 1999, the Nebraska legislature passed and the Governor signed legislation withdrawing Nebraska from the Compact. One of the conditions for withdrawal from the Compact is to provide other member States five-year notice. Subsequently, a total of six lawsuits are currently pending regarding Nebraska’s denial of the application and withdrawal from the Compact. The first of the lawsuits went to trial in June 2002 with the other members of the Compact suing the State of Nebraska. On September 30, 2002, the judge awarded the plaintiffs 151 million dollars. The State is appealing the judge’s decision.

After the State’s withdrawal from the Compact, technical staff in the Department and the Department of Environmental Quality LLRW programs were reassigned to other positions. The only action taken by the State during the review period was the formal denial of the application. The preliminary denial of the application and the technical basis for the denial was reviewed during the last IMPEP in September 1998. The State identified that there was no change in conclusions between the draft and final package. Consequently, the review team did not review this indicator.

## 5.0 SUMMARY

As noted in Sections 3 and 4 above, Nebraska's performance was found to be satisfactory for all six performance indicators. Accordingly, the review team recommended and the MRB concurred in finding the Nebraska Agreement State program adequate to protect public health and safety and compatible with NRC's program. Based on the results of the current IMPEP review, the review team recommended and the MRB concurred that the next full review should be in approximately four years.

### RECOMMENDATION:

1. The review team recommends that NRC's Office of Nuclear Material Safety and Safeguards review the contractor's procedure for inputting NMED data and review the database information for accuracy and completeness. (Section 3.5)

## LIST OF APPENDICES AND ATTACHMENTS

Appendix A	IMPEP Review Team Members
Appendix B	Nebraska Organization Charts
Appendix C	Inspection Casework Reviews
Appendix D	License Casework Reviews
Appendix E	Incident Casework Reviews
Attachment	December 3, 2002 Letter from Robert Leopold Nebraska's Response to Draft IMPEP Report

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

<b>Name</b>	<b>Area of Responsibility</b>
Duncan White, Region I	Team Leader Technical Quality of Licensing Actions
Robert Gallagher, Massachusetts	Technical Quality of Inspections
Linda McLean, Region IV	Technical Staffing and Training Response to Incidents and Allegations Inspection Accompaniments
John Zabko, STP	Status of Materials Inspection Program Legislation and Program Elements Required for Compatibility

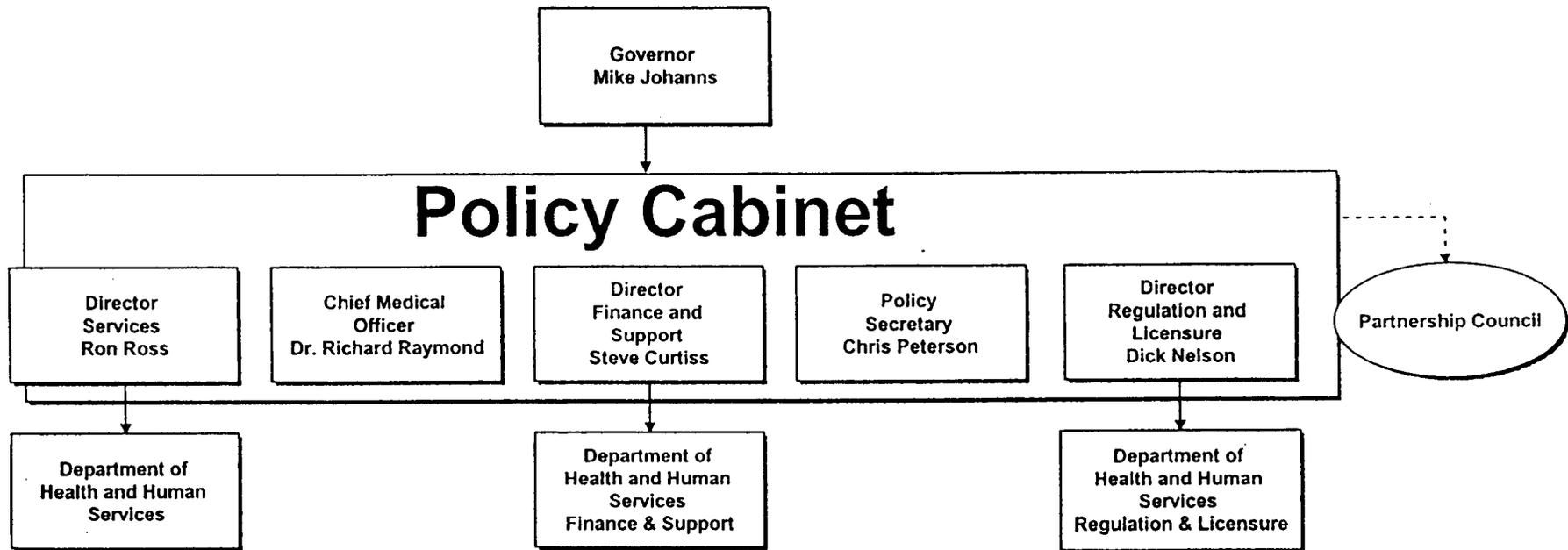
APPENDIX B

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

ORGANIZATION CHARTS

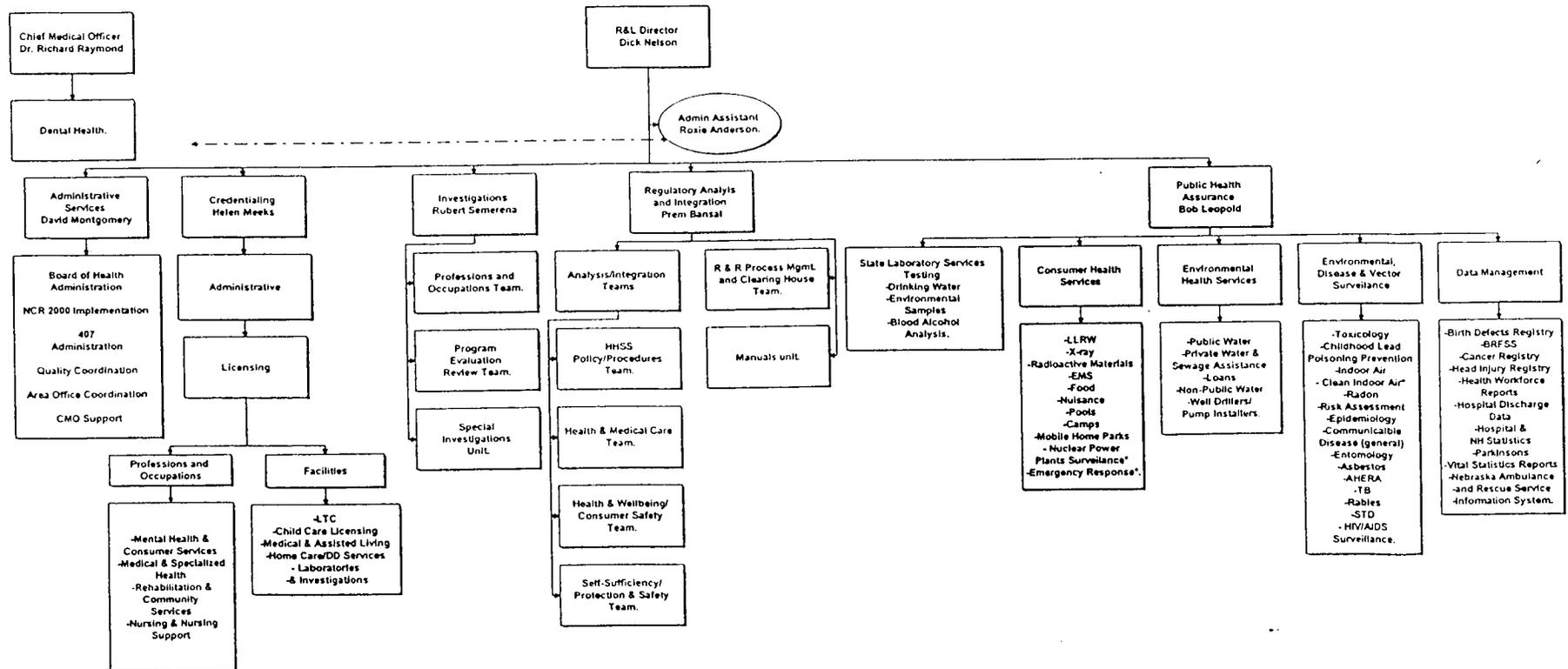
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# Nebraska Health and Human Services System



POLYCAB

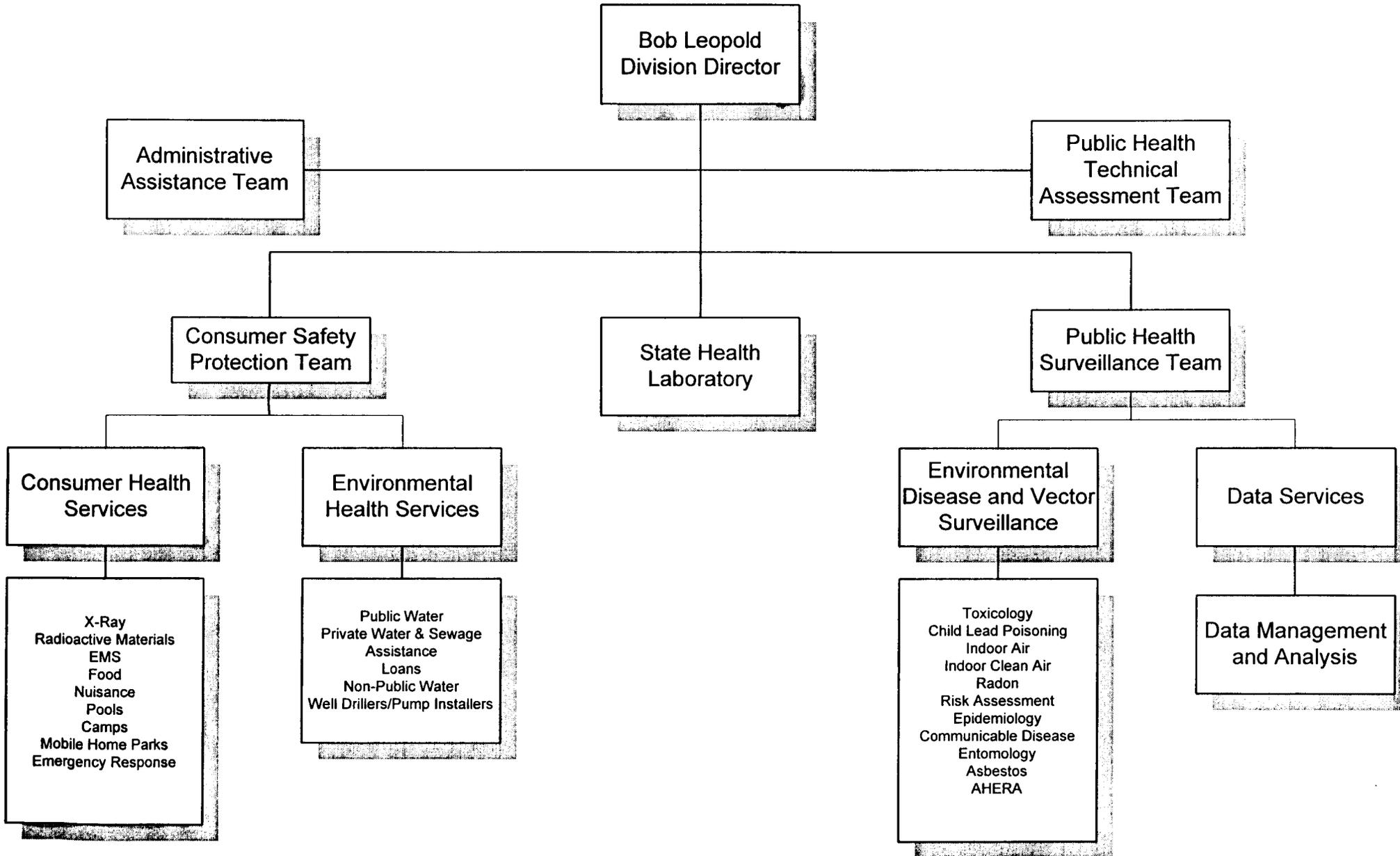
# Nebraska Health and Human Services System Regulation & Licensure



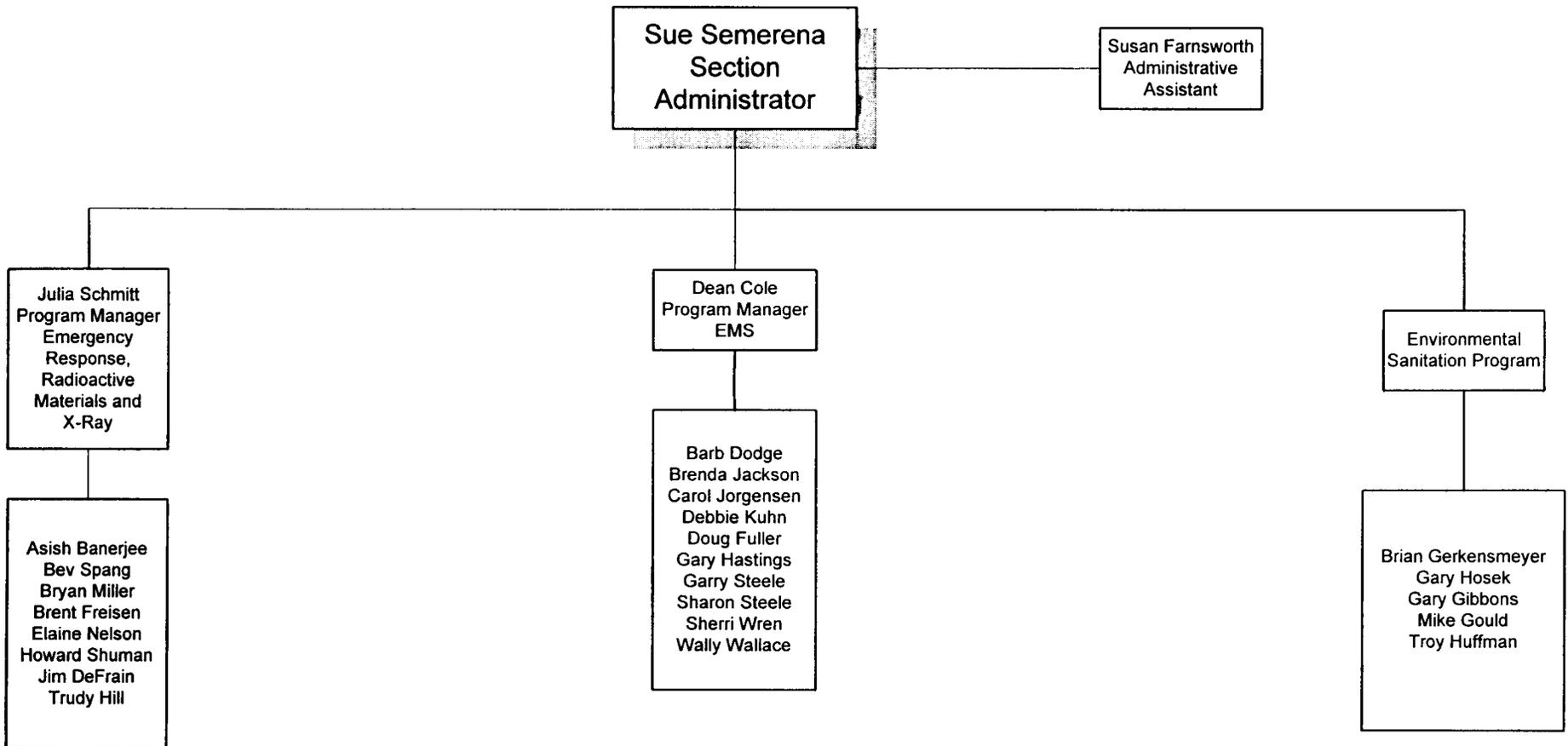
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# Public Health Assurance Division

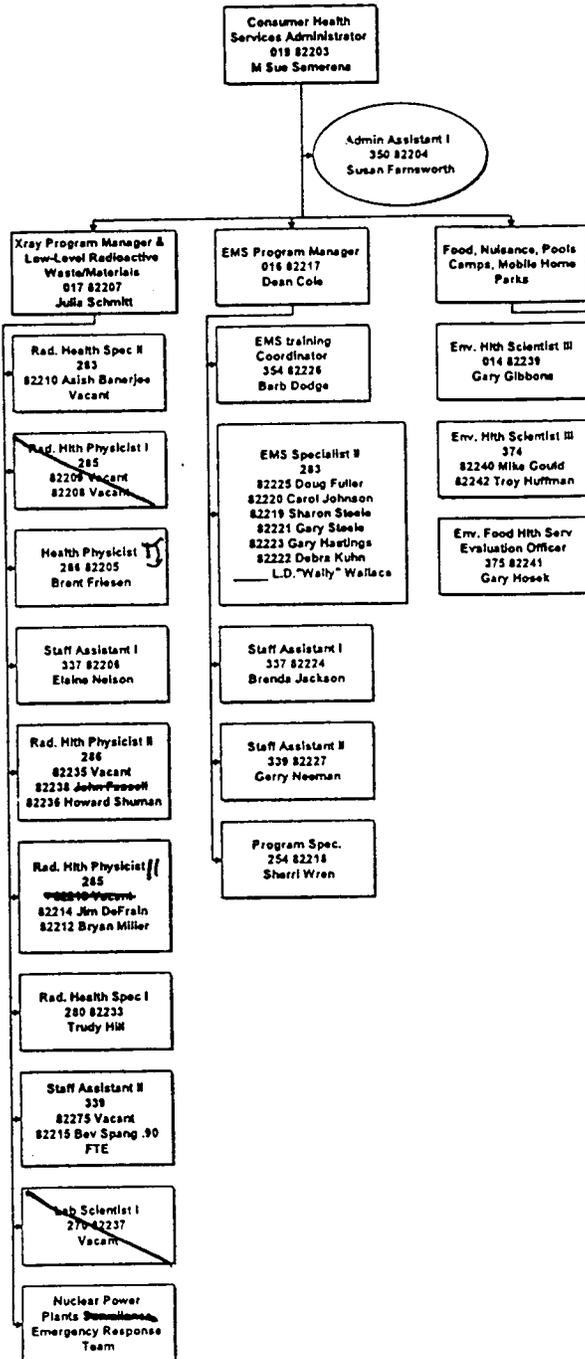
August 8, 2002



# Consumer Health Services



# Health and Human Services System Regulation & Licensure Public Health Assurance Consumer Health Services



RLPHACHS

ATTACHMENT

December 3, 2002 Letter from Robert Leopold  
Nebraska's Response to Draft IMPEP Report

ML023400525



December 3, 2002

Paul H. Lohaus, Director  
Office of State and Tribal Programs  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

02 DEC 12 PM 5:11

STP

Dear Mr. Lohaus:

We have reviewed the Draft IMPEP report and offer the following comments:

Page 4, Paragraph 1

The third sentence should be changed to read "The licensee did not have material or personnel in the State and did not perform work during the winter months."

Page 4, Paragraph 2

Add the following after the third sentence "New licensees are required by license condition to inform the Agency in writing when activities authorized by the license are initiated."

Page 7, Paragraph 3

Change the second sentence to read "Once the reviewer completes the action, a second review is performed by one of the other license reviewers."

Page 8, Paragraph 5

We fully support the review team's recommendation that the NRC's Office of Nuclear Material Safety and Safeguards review the contractor's procedure for inputting NMED data and review the database for accuracy and completeness.

Page 10, Paragraph 4

The Program has now submitted the five adopted final regulations for NRC review.

Page C.2, File No.: 10

The inspector's initials are HS and JF.

Page D.2, File No.: 11, Comment A

The original letter of intent is now maintained with other financial assurance documents.

Page D.2, File No.: 11, Comment C

On 02/28/97 we received the application for renewal in entirety. A deficiency letter was sent on 06/30/97 and the reply was received 07/21/97. In October of

ML023400525

1997, we were requested by the licensee to hold action on the renewal as the facility was undergoing a merger with a neighboring medical center. On May 28, 1997 we received a new renewal request reflecting the merged status. A deficiency letter was received on 09/11/98 and additional information was requested on 1/28/99. The renewal was issued on 02/28/99, a period of less than 12 months from receipt of the merger renewal application. We respectfully request that this comment be removed.

We appreciate the professional and constructive efforts of the entire review team. Linda McLean should be commended for her efforts as our Agreement State Officer as well. We have found her cooperative and helpful attitude to be a true asset as the program has evolved.

If you have any questions about our comments, please contact Julia Schmitt at 402/471-0528.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Leopold". The signature is written in a cursive style with a large, sweeping initial "R".

Robert Leopold, Director  
Public Health Assurance Division