UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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ARLINGTON, TEXAS 76011-4005

March 8, 2005

Mr. Aubrey V. Godwin, Director
Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, AZ 85040

Dear Mr. Godwin:

A periodic meeting with Arizona was held on February 10, 2005. The purpose of this meeting was to review and discuss the status of Arizona's Agreement State Program. The NRC was represented by Lloyd Bolling from NRC's Office of State and Tribal Programs (by telephone) and me.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail VHC@NRC.GOV to discuss your concerns.

Sincerely,

/RA/

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
As stated

cc w/encl
Paul Lohaus, Director, STP

Arizona Radiation Regulatory Agency

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR ARIZONA

DATE OF MEETING: February 10, 2005

ATTENDEES:

State

Aubrey Godwin, Director
William Wright, Program Manager
Dan Kuhl
Geoffrey Short
Louisa Budd
John Lamb

NRC

Vivian Campbell, Regional State Agreements Officer, Region IV
Lloyd Bolling, Agreement State Project Officer, Office of State and Tribal Programs (by telephone)

DISCUSSION:

The Arizona Radiation Regulatory Agency (Agency) is a cabinet-level agency. The Director is appointed by the Governor. The Agency is responsible for the conduct of a statewide radiological health and safety program, and consists of five program areas: Radioactive Materials/Non-Ionizing Radiation (RAM), X-ray Compliance (X-ray), Radiation Measurements Laboratory (Lab), Emergency Response, and The Medical Radiologic Technology Board of Examiners.

The following is a summary of the meeting held in Phoenix, Arizona, on February 10, 2005, between representatives of the NRC and the Agency. During the meeting, the topics suggested in a letter dated November 10, 2004, from Ms. Campbell to Mr. Godwin were discussed. The discussion pertaining to each topic is summarized below.

1. Status of State's actions to address all open previous IMPEP review findings and/or open recommendations.

   The previous Integrated Materials Performance Evaluation Program (IMPEP) review was conducted during the period February 25 - March 1, 2002. The status of the recommendations outlined in Section 5.0 of the final IMPEP report was discussed at the periodic meeting conducted August 19, 2003. During the August 2003 meeting, the NRC staff recommended that two of the six IMPEP recommendations be closed at the next IMPEP review. The current status of the remaining four recommendations is summarized below.

   a. **Recommendation**: The review team recommends that the Agency reexamine their procedure for handling allegations, consider the key elements of procedures outlined in NRC's Management Directive 8.8, and incorporate the elements that are appropriate for their program. (Section 3.5)

Current Status: The Agency has prepared and implemented a procedure, effective February 6, 2005, for handling allegations received by the Program. The procedure specifically references the guidance outlined in NRC's Management Directive 8.8. It is recommended that this item be closed at the next IMPEP review.

b. **Recommendation**: The review team recommends that the Program submit legally binding requirements to NRC for review. (Section 4.1.2)

Current Status: The Agency has not submitted any legally binding requirements for NRC review. However, they are working to update their regulations instead of using legally binding requirements to satisfy the compatibility requirements. The status of Arizona's regulations is discussed in detail in Item 4.c. of this enclosure. It is recommended that this item be reviewed at the next IMPEP review.

c. **Recommendation**: The review team recommends that the Agency review its procedures to improve the timeliness in incorporating new rule changes into their regulatory program, including immediately addressing the reporting requirements for generally licensed device distributors which were due by August 16, 2001. (Section 4.1.2)

Current Status: Agency management again discussed the State's rulemaking process. Management is evaluating regulatory changes required in each amendment and determining the best course of action to be taken within the constraints of their current rulemaking process. It appears that the Agency will continue to be challenged in some cases to adopt new rule changes in a timely manner. It is recommended that this item be reviewed at the next IMPEP review.

d. **Recommendation**: The review team recommends that the Agency establish qualification requirements for SS&D reviewers and develop a formalized, written training program. (Section 4.2.2)

Current Status: The Agency has established qualification and training requirements for SS&D reviewers. The Agency sent two staff to the September 2003 SS&D workshop. The NRC staff advised the State to review the IMPEP procedures outlined in Office of State and Tribal Program procedure SA-108, entitled Non-Common Performance Indicator - Sealed Source & Device Reviews, to assure that their criteria are consistent. It is recommended that this item be closed at the next IMPEP review.

2. Strengths and/or weaknesses of the State program as identified by the State or NRC including identification of actions that could diminish weaknesses.

a. **Program Strengths**: Agency Management stated that being a cabinet-level agency has provided them access to additional funding to purchase needed equipment. The Agency continues to have qualified, experienced staff.

b. **Program Weaknesses**: Although the Agency has been able to attain additional funding for equipment, general program funding continues to be a challenge. The

Agency had a zero budget change for fiscal year 2004. Agency management stated that they again expect to run out of travel funds near the end of the fiscal year.

Of the seven vacancies reported in the August 2003 periodic meeting summary, the Agency had filled one vacancy in each of the following programs: RAM, X-ray and Lab. However, during the last budget cycle, three vacancies became unfunded, one in each referenced program.

During the last periodic meeting, Agency management discussed the lack of depth in the emergency response organization. Since that time the Agency has been able to hire a consultant to assist in responding to major emergency events. However, the Agency still cannot fill all the critical positions to staff a second shift in the event of a major emergency.

3. Feedback on NRC's program as identified by the State and including identification of any action that should be considered by NRC:

Agency management stated that the Commission's decision to discontinue the Federal Register in hard copy has caused difficulty in not having the Statements of Consideration to develop the need for the regulation and the economic statements to support the need for the rule. These documents are critical to getting the rules accepted in Arizona, and they are not easily available. On January 14, 2005, STP sent a letter that explained how Agreement States can stay informed of amendments to Title 10 Code of Federal Regulations and where to get specific information concerning items required for adoption due to compatibility. The NRC staff provided this information to the Agency. Agency management stated that this does not adequately address their concerns and does not assist the State in the rule adoption process.

4. Status of State Program including:

a. **Staffing and Training**:

i) *Number of staff in the program and status of their training and qualifications*: The RAM program currently is budgeted for three FTE, one for licensing and rule writing and two for inspection. The Agency was able to fill one of the RAM vacancies in November 2003. Since that time, the new staff member has attended the 5-week Applied Health Physics Course offered by Oak Ridge Associated Universities and the security training held in Albuquerque, New Mexico.

ii) *Program vacancies:* The RAM program currently has one unfunded position.

iii) *Staff turnover*: There has been no turnover since the last periodic meeting. However, one individual was employed.

iv) *Adequacy of FTE for the materials program*: Agency management stated that they considered the current RAM staffing level borderline. The Program has experienced growth in some complex licensing areas. For example, since the last IMPEP, the number of nuclear pharmacies has almost doubled. In addition, the number of particle accelerator licensees has doubled since 1996.

v)

b. **Materials Inspection Program**:

i) *Discuss the status of the inspection program including if an inspection backlog exists and the steps being taken to work off the backlog.* The RAM program has no inspection backlog based on NRC's criteria. The Program conducts approximately 175 inspections annually.

c. **Regulations and Legislative changes**:

i) *Discuss status of State's regulations and actions to keep regulations up to date, including the use of legally binding requirements:* The NRC staff reviewed the status of the Arizona regulations with Agency management. The staff has drafted a rule package that includes the General License (GL) rule (RATS-ID 2001-1) and revisions of the Skin Dose Limit (RATS-ID 2002-1). This rule package is currently undergoing in-house peer review. Agency management stated that they anticipate submitting this regulation package for NRC review by July 2005. In the meantime, the Agency has begun implementing a GL registration program. The Agency has contacted 10 of the 16 affected general licensees. In addition, the Agency is investigating two general licensees, one of which is out of business, where devices cannot be located.

The NRC staff also discussed the upcoming due date for the Medical Use of Byproduct Material amendment (RATS-ID 2002-2). Agency management stated that the unresolved issue regarding training and education for medical use licensees causes problems for the State. Because of the States rule making process, they need to promulgate the rules in their entirety. Agency management informed the NRC staff that they do not plan to promulgate medical rule making until the training and education issue is resolved. However, Agency management agreed to reassess their decision.

d. **Program reorganizations**:

i) *Discuss any changes in program organization including program/staff relocations and new appointments:* Agency management stated that no organization changes are anticipated at this time. However, they informed NRC staff that the Agency will be undergoing Sunset Review next fiscal year to determine whether the Agency is accomplishing its mission.

Since the 2003 Periodic meeting, Agency management has completed their evaluation of the steps that would be need to be taken in order for the program to become 100 percent fee-funded. They have provided that information to the State Legislature. However, no further action has been required by the Legislature.

e. **Changes in Program budget/funding**:

Agency management stated that there were no vacancy savings this fiscal year. Therefore, they anticipate a shortage in funds as they approach the end of the fiscal year. They expect their travel budget to be a challenge again this year.

5. Event Reporting, including follow-up and closure information in NMED:

Prior to the periodic meeting, NRC staff queried the NMED database to identify the events reported by the Agency since the IMPEP. Twenty-three events were identified as reportable. Of the 23, only two were identified as not being reported timely and three needed additional followup information. These events were discussed with the Agency. Agency management stated that all reportable incidents are entered into the NMED database, and additional information is provided as they get the information. The staff has been diligent in closing events once their investigation has been completed and no further action is anticipated by the State.

6. Response to Incidents and Allegations:

One allegation was referred since the 2003 periodic meeting. The Agency did not followup on the allegation due to the low level of safety significance and the lack of resources. The Agency informed the Region by letter of their decision.

7. Status of the following Program areas:
   a. **Sealed Source & Device Program**:
      As discussed in Item 1.d. of this enclosure, two staff attended the SS&D workshop in September 2003. Since that time, the State has worked on the transfer of certificates from the States of California and Georgia.
   b. **Uranium Mills Program**: Not applicable
   c. **Low-Level Waste Program**: There are no plans for a low-level waste facility in the State.

8. Information exchange and discussion:

   a. **Current State initiatives**:
      In December 2002, the States received a letter that notified them of NRC's regulatory proposal to enhance the security of portable gauges. As a result of that notification, the Agency instituted a licensing policy requiring that gauge users to implement two levels of security for their devices beyond the locked storage/transportation container and locked handle on the gauge. Since instituting this policy change, the Agency reported that loss of portable gauges in their jurisdiction had significantly reduced.

   b. **Emerging technologies**:
      The Agency indicated that they are reviewing applications for mobile positron emission tomography (PET).

   c. **Large, complicated or unusual authorization for use of radioactive materials:**
      Agency management indicated that they have not received any applications for irradiators, major decommissioning of sites, or waste processing, storage or disposals.

d. **State's mechanisms to evaluate performance**:
Agency management conducts a weekly meeting with Senior management staff. The RAM Program Manager then conducts a followup staff meeting to review the inspection schedule, plan their work schedule, and look ahead for upcoming issues. The Agency does not have the resources to establish electronic databases to manage their workload. However, because of the Legislative oversight requirements, the Agency must carefully monitor the timeliness of licensing, inspection and enforcement actions.

e. **NRC current initiatives**:
The NRC staff discussed the current status of the portable gauge rule, sensitive information screening of documents in ADAMS, Security Measures, and Part 35 - Training and Experience rulemaking.

9. Schedule for the next IMPEP review:

The next IMPEP is tentatively scheduled for FY2006. Agency management requested that NRC consider scheduling the review in early October 2005 in consideration of the upcoming Agency Sunset review and the November 2005 Palo Verde exercise.