

March 25, 2005

MEMORANDUM TO: Management Review Board Members:

Martin J. Virgilio, EDO  
Paul H. Lohaus, STP  
Karen D. Cyr, OGC  
Margaret V. Federline, NMSS

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FROM: Kathleen N. Schneider, Senior Project Manager  
Office of State and Tribal Programs

SUBJECT: REVISED MINUTES: AUGUST 17, 2004 MRB MEETING  
ON THE WORKING GROUP'S REPORT ON THE RE-  
EVALUATION OF 10 CFR 34.41(a)

Attached are the revised minutes of the Management Review Board (MRB) meeting held on August 17, 2004 based on comments received from the MRB and Chairs of the Working Group. I have also attached the March 15, 2005 response from Mr. Jared Thompson, Chair, Organization of Agreement States (OAS) to Mr. Virgilio, Chair, MRB on the OAS schedule to submit a petition for rulemaking.

If you have comments or questions on the minutes please contact me at 415-2320.

Attachments:  
As stated

cc: Edgar Bailey, CA  
Pearce O'Kelley, SC  
Thomas Young, NMSS  
Jan Endahl, TX

Management Review Board Members

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## MINUTES: MANAGEMENT REVIEW BOARD MEETING OF AUGUST 17, 2004

These minutes are presented in the same general order as the items were discussed in the meeting. The attendees were as follows:

Martin Virgilio, MRB Chair,  
Karen Cyr, MRB Member, OGC  
Edgar Bailey, CA, OAS Liaison  
Jan Endahl, TX, Working Group (WG) Co-Chair  
James Smith, NMSS, WG Member  
Maria Schwartz, OGC, WG Member  
Patricia Holahan, NMSS  
Josephine Piccone, STP  
Kathleen Schneider, STP

Paul Lohaus, MRB Member, STP  
Margaret Federline, MRB Member, NMSS  
Pearce O'Kelley, SC, OAS Liaison  
Thomas Young, NMSS, WG Co-Chair  
Sally Merchant, OE, WG Member  
Stuart Treby, OGC  
Scott Moore, NMSS  
John Zabko, STP

By teleconference:

James Myers, STP, WG Member  
Richard Ratliff, TX  
Cindy Cardwell, TX

Bruce Carrico, NMSS, WG Member  
Ruth McBurney, TX

1. **Convention.** Mr. Martin Virgilio, Chair of the Management Review Board (MRB) convened the meeting at 3:10 p.m. He summarized the meeting's proceedings. Introductions of the attendees were conducted.
2. **Consideration of the Working Group's Report on the Re-Evaluation of 10 CFR 34.41(a) commonly known as the Two-Person Rule.** Mr. Thomas Young, Office of Nuclear Material Safety and Safeguards, and Ms. Jan Endahl representing the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD), co-chaired this WG.

Mr. Young summarized the general presentations of options developed by the WG as discussed in the WG Report. Ms. Endahl presented the issues that shaped the consensus view. Mr. Young presented the differing view. The final summary and WG recommendations were presented by Ms. Endahl.

### **MRB Discussion**

The MRB discussed several aspects of the WG Report and solicited additional discussion with individual WG members. Discussion included the need for the second person at radiography sites and duties of that qualified individual, requirements to ensure safety at field radiography sites, original rationale for rule, Texas' requirements, difference between NRC and Texas implementation surveillance component of the rule, compatibility designations of the radiography requirements, and associated risk and incidents that could be attributed to the violations of these radiography requirements.

The MRB discussed an additional option to the four options listed in the WG report. The MRB proposed that either Texas or the OAS submit a petition for rulemaking to revise the requirements in 10 CFR 34.41. The MRB and Agreement State Liaisons discussed with staff the 2.802 petition process versus the process NRC staff would use for an NRC initiated rulemaking discussed in Option 4 of the WG Report. NRC staff indicated that a petition for rulemaking is usually reviewed and a determination made within a year of acceptance. The MRB also discussed whether it might be possible for an Agreement States representative to participate on NRC's Petition Review Board. The Agreement State Liaisons also discussed the potential for the development of the petition as a candidate for the National Materials Program.

The MRB also discussed how the NRC would handle compatibility while the petition was under review. The MRB discussed an option, used previously for another rule, where the surveillance component of the Two-Person Rule would be “put into abeyance” or, findings deferred on implementation of the surveillance component of the Two-Person Rule until NRC’s final determination on the petition for rulemaking. This approach was approved by the Commission in 1997 for implementation of the Agreement State Quality Management (QM) rules under Part 35 in Staff Requirements Memorandum 97-054 as follows:

The staff should continue to defer findings on Agreement State QM rules until NRC issues a revised Part 35 rule as directed in the SRM on DSI-7 and an effective date for Agreement State implementation has been set. Such a date could be earlier than the normal 3-year interval for Agreement State implementation of an NRC rule.

The Agreement State Liaisons noted that Agreement States might accept abeyance/deferral and the petition for rulemaking option but expressed concerns that the NRC might deny the petition.

### **MRB Decision**

The MRB did not approve the WG’s consensus recommendation or the differing view contained in the WG Report. The MRB recommended that the State of Texas, or the OAS file a petition for rulemaking in accordance with 10 CFR 2.802 to revise Section 10 CFR 34.41(a). The MRB agreed that until the final decision is made on the petition for rulemaking, the staff would defer compatibility findings on the implementation of the surveillance component of the Two-Person Rule in Texas and any other State that is implementing 10 CFR 34.41(a) in a similar way. The following language will be included in future Integrated Materials Performance Evaluation Program reports for States that have implemented 10 CFR 34.41(a) as described below:

[**STATE**] has adopted and is implementing a version of the 10 CFR 34.41(a) regulation commonly know as the “Two-Person Rule” in a manner where [**STATE**] licensees are allowed the flexibility to determine when radiographic operations can be conducted safely where the first radiographer could observe operations and prevent intrusion into the restricted area while the second radiographer is nearby engaged in other job-related activities. The review team [***did not attribute any events or incidents/did attribute {x} events or incidents***] in [**STATE**] as a result of implementing 10 CFR 34.41(a) in this manner.

A petition for rulemaking [***will be/has been***] submitted to NRC to revise 10 CFR 34.41(a) to be consistent with the Texas regulation. NRC is continuing to hold in abeyance compatibility findings for those Agreement States that have adopted and are implementing the 10 CFR 34.41(a) rule in this manner, until NRC issues a determination on a petition for rulemaking.

**Comments.** Mr. Virgilio, MRB Chair, thanked the WG for their job and commitment to complete their task.

3. **Adjournment.** The meeting was adjourned at approximately 5:00 p.m.