UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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April 4, 2005

Mr. Richard A. Ratliff, P.E., L.M.P.
Radiation Program Officer
Division of Regulatory Services
Texas Department of State Health Services
1100 West 49th St.
Austin, Texas 78756

Dear Mr. Ratliff:

An additional periodic meeting with Texas Department of State Health Services (DSHS) was held on March 15, 2005, as directed by the NRC's Management Review Board (MRB) on July 27, 2004. The purpose of this meeting was to review and discuss the status of Texas' Agreement State Program specific to the activities administered by DSHS including the status of staffing, vacancies and the reorganization. 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/ Linda McLean for

Vivian H. Campbell
Regional State Agreements Officer

Enclosure:
As stated

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR TEXAS

DATE OF MEETING: March 15, 2005

ATTENDEES:

State

Richard Ratliff, Radiation Program Officer
Margaret Henderson
Susan Tennyson, Director, Environmental and Consumer Safety Section
Alice Rogers, Inspection Unit
Tommy Cardwell, Radiation Branch
Ruben Cortez
Bill Silva, Radioactive Materials Group
Bob Free, Environmental Monitoring Group
Cindy Cardwell, Radiation Group, Policy, Standards & Quality Assurance
Ruth McBurney, Radiation Safety Licensing Branch, Regulatory Licensing Unit, Health Care Quality Section
Pete Myers, Radioactive Material Licensing Group
Gary Smith, Technical Assessment Group
Amy Harper, Enforcement Unit
Carol Vetter, Consumer Safety Group

NRC

Vivian Campbell, Regional State Agreements Officer, Region IV
Dennis Sollenberger, Office of State and Tribal Programs
Aaron McCraw, Agreement State Project Officer, Office of State and Tribal Programs (by telephone)

DISCUSSION:

The 78th Texas Legislative Session passed House Bill 2292 that consolidated four legacy agencies including the Texas Department of Health into a single department. On September 1, 2004, the Texas Department of State Health Services (DSHS) was created and designated as the State's radiation control agency. DSHS consist of four programs including the Division of Regulatory Services which retains the function of the State's radiation control program. DSHS is organized into functional groups rather than in program groups. Under the reorganization, the Texas Bureau of Radiation Control ceased to exist. The Radiation Program Officer is designated as the radiation control program director.

The following is a summary of the meeting held in Austin, Texas, on March 15, 2005, between representatives of the NRC and DSHS. During the meeting, the topics suggested in a letter dated January 12, 2005, from Ms. Campbell to Mr. Ratliff 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 August 27 - 31, 2001. The status of the recommendations outlined in Section 5.0 of the final IMPEP report was discussed at the periodic meetings conducted December 2, 2002 and June 8, 2004. The current status of the recommendations is summarized below.

a. **Recommendation**: The review team recommends that the Department adhere to the policy of annual supervisory accompaniments of all qualified inspectors. (Section 3.2)

Current Status: Management stated that all annual supervisory accompaniments were completed at the time of the periodic meeting. The accompaniments are now being coordinated between the Radioactive Materials Inspection Manager and the Radiation Policy, Standards and Quality Assurance Manager. The accompaniments are being split between these groups. The accompaniments are then rotated the next year so that the entire program is audited by each group over a 2-year period. It is recommended that this item be reviewed at the next IMPEP review.

b. **Recommendation**: The review team recommends that the Department (DSHS) report all significant and routine events as well as follow-up event information to the NRC in accordance with the STP Procedure SA-300, "Reporting Material Events." (Section 3.5)

Current Status: As part of the preparation for the periodic meeting, the NRC staff reviewed all the reportable events that were reported to NMED by DSHS since the previous IMPEP review. The staff identified 160 events reported by the State. Of the 160 events, 37 events appear to have been reported late. Twenty-two events were identified as needing additional basic information defined in Section 3 of SA-300. It should be noted that the NRC staff did not perform a technical quality completeness review of the events reported. This subject is discussed in further detail in Item 5 of this document. It is recommended that this item be reviewed at the next IMPEP review.

c. **Recommendation**: The review team recommends that the Department prepare necessary supporting documentation identifying the bases for the licensing actions associated with reclamation plans for the three conventional mills. (Section 4.4.4)

Current Status: The three conventional mills have significant groundwater issues and closure will be a long-term project. However, DSHS staff is continuing to make progress on development of supporting documentation for these closures. It is recommended that this item be reviewed at the next IMPEP review.

The status of the recommendation for NRC is summarized below.

Recommendation: The review team recommends that NRC, in coordination with the Agreement States, re-evaluate the two-person rule to assess the effectiveness of the intended outcomes, including experience from past events, and propose a strategy and rule interpretation that best achieves the goal of safety. (Section 4.1.2)

Current Status: The NRC convened a working group composed of staff from NRC and Agreement States to re-evaluate the two-person rule. The working group completed its work and presented a report to the MRB that contained several options. On August 16, 2004, the MRB decided to defer any decisions of Agreement State compatibility pertaining specifically to this regulation in abeyance until NRC issues a determination on a petition for rulemaking. On March 8, 2005, the OAS/CRCPD Executive Boards decided that Texas would prepare a draft petition for rulemaking on the two-person rule to be completed within 6 months.

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**: DSHS continues to have well trained, experienced, and dedicated staff members who are often called on as resources by both federal and other state agencies. DSHS continues to have well-trained staff specifically dedicated to rulemaking activities, as well as an active and experienced Radiation Advisory Board.

   b. **Program Weaknesses**: Staff recruitment and retention remain a significant challenge for DSHS. At the time of the periodic meeting, DSHS had seven vacancies in the radiation control program. However, from 2000 to 2004, the turnover rate for Environmental Specialists in radiation control was 56.1 percent. Positions were vacant on average for 112 days, but some were vacant for more than 1 year. In 2004, DSHS was able to provide technical staff a 6.8 percent increase as a retention incentive. DSHS has developed a recruitment/retention plan that would create a new health physics classification category at a higher pay scale for technical staff. Management stated that they expect even more turnover if the new classification is not approved by the Legislature. As discussed during the 2002 periodic meeting, DSHS still has the legislative mandated full time equivalent (FTE) cap which affects their ability to hire staff in a time of increasing workload.

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

   DSHS management generally expressed concern regarding the perception that NRC does not listen to the State's issues. DSHS again discussed issues with NRC's interaction with States during emergency preparedness (EP) exercises at

nuclear power plants. DSHS management acknowledged the need to keep NRC appraised of current information during an event at a power plant and understands NRC's need to communicate with the media in a timely fashion. Management outlined two issues to be addressed: 1) should States provide a dedicated contact person, with no other responsibilities, to answer specific questions and collect current information, and 2) how can information provided by NRC to the media be coordinated with the State's local information center. Management indicated that they have discussed these issues with NRC management at the last CRCPD meeting, but have received no followup.

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 radioactive materials (RAM) program is staffed with 56 technical FTE. There are 10 management staff who also perform some technical functions in addition to their management duties. The Radioactive Materials Inspection Manager is currently coordinating training of three new inspectors. Technical staff continue to receive training through the core NRC courses or their equivalent. DSHS has an out-of-state travel cap so sending staff out of state to attend training courses is a challenge. DSHS has arranged to host the Inspection Procedures course in Austin this fiscal year and is planning to host the Transportation course.

ii) *Program vacancies:* The RAM program currently has seven vacancies. Two are engineering positions in the Technical Assessments Group. (DSHS has managed to fill both positions after vacancy periods of 2.5 years for one position and 7 months for the other.) Three are inspectors in the Radiation Inspection Group. Two are incident investigators in the Environmental Monitoring Group.

iii) *Staff turnover*: Since the June 2004 periodic meeting, the program has had eight turnovers of staff. In the Environmental Monitoring Group, one technical position was filled and two were vacated. In the Radioactive Materials Inspection Group, one inspector retired and two new inspectors were hired. In the Radioactive Material Licensing Group, one technical position was filled and one was vacated and filled.

iv) *Adequacy of FTE for the materials program*: DSHS management stated that if fully staffed and trained, the number of staff is adequate to keep up with the current workload. However, with the implementation of HB 2292 on September 1, 2004, licenses are required to have an administrative renewal every 2 years and a full technical renewal every 10 years. This legislation will affect the inspection and QA programs as well as the licensing program. DSHS staff stated that HB 2292's requirement for administrative renewals every 2 years may stretch the adequacy of the FTEs in the materials licensing program to a critical point.

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 inspection program consists of 15 inspectors located in Austin and 9 field offices. The program has approximately 1700 radioactive material licenses. DSHS management reported that there are currently 375 radioactive material inspections in Priorities 1-3 that are more than 25 percent overdue. This number includes field office inspections that are overdue.

The RAM Inspection Group Manager provided the NRC staff an inspection priority schedule that will be used by the inspectors to help them set inspection priorities. The schedule is intended to provide a mechanism to catch up on the overdue inspections without falling behind on additional inspections based on the State criteria for inspection. The State's criteria are the same for subsites as the interval for the main site. NRC's criteria only includes 20 percent of the subsites. NRC's criteria only include initial inspections of newly licensed main sites. The State program considers all new main and subsites as initial inspections. Therefore, the number of overdue Priority 1-3 inspections, based on NRC's criteria, will be less than the reported 375.

The inspection program has had significant challenges since the June 2004 periodic meeting. One inspector retired and two inspectors had performance issues. In addition, three inspectors were being trained most of the year.

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 again reviewed the status of the Texas regulations with DSHS management. Based on the Texas state regulation status sheet maintained by NRC, there appears to be a number of amendments that are overdue. The overdue amendments are the Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State (RATS ID 1997-2), Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea (RATS ID 1997-7), Deliberate Misconduct by Unlicensed Persons (RATS ID 1998-1), Radiological Criteria for License Termination of Uranium Recovery Facilities (RATS ID 1999-1), and Revision of the Skin Dose Limit (RATS ID 2002-1).

In addition, as discussed in the June 2004 periodic meeting, there are a number of amendments that appear to have been submitted and reviewed as proposed regulations, but never resubmitted for review in final. DSHS indicated that they had previously provided updated information on the status of regulation to the 2000 IMPEP team that had not been incorporated into the STP State Regulation Status (SRS) sheet. DSHS provided a copy of their regulation status and agreed to review their records to search for documents indicating NRC's review of the outstanding regulations. The NRC staff agreed to facilitate a meeting with the appropriate NRC staff to discuss the resolution of these outstanding amendments. The State and the NRC need to find

evidence of NRC's prior review or these regulations need to be resubmitted to NRC for a formal regulation review for compatibility.

DSHS has submitted their proposed rules for the Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material (RATS ID 2001-1). NRC reviewed the proposed rules and provided their comments in a letter dated April 2, 2004. DSHS indicated that they had finalized the GL rule. They have not submitted them to NRC for review, but agreed to do so within the month.

The NRC staff also discussed the upcoming due date for the Medical Use of Byproduct Material amendment (RATS-ID 2002-2). DSHS indicated that they had adopted the majority of the medical compatibility rules in 2000, with the exception of the training and experience requirements and had submitted them to NRC as draft. The DSHS' submittal was prior to NRC's final medical rule which became effective October 24, 2002. Therefore, the draft was not reviewed and no compatibility finding has been made for this rule.

d. **Program Reorganizations**:

i) *Discuss any changes in program organization including program/staff relocations and new appointments:* As a result of HB 2292 on September 1, 2004, the Texas Department of State Health Services (DSHS) was created and designated as the State's radiation control agency. The new Division of Regulatory Services contains two sections and eight units. DSHS is organized into functional groups rather than in program groups. The radiation control program is now located in three different units. Under the reorganization, the Texas Bureau of Radiation Control ceased to exist.

The Radiation Program Officer is designated as the radiation control program director. The Radiation Program Officer reports directly to the Assistant Commissioner, Division of Regulatory Services and is the subject matter expert for radiation control issues. The intended role of the Radiation Program Officer is to facilitate a cohesive radiation control program across the three units.

e. **Changes in Program Budget/Funding**:

The 2003 Legislature appropriated the former Bureau of Radiation Control's operating budget to DSHS. However, with the reorganization, the budget is divided among four different organizational units.

5. <u>Event Reporting, including follow-up and closure information in NMED</u>:

Prior to the periodic meeting, NRC staff queried the NMED database to identify the events reported by DSHS since the last IMPEP. There were 160 events identified as reportable. Of the 160 events, 37 were identified as not being reported timely and 22 needed additional followup information. In addition, the DSHS reviewed the NMED database for events reported since the June 2004

periodic meeting. DSHS identified six events that were reportable to NRC, but had not been reported. Staff reported these events to NRC's Operations Center even though they were late.

DSHS management indicated that the reason for the late reporting and incomplete data was the lack of staff to complete incident reviews. Texas had three FTE budgeted for incident investigation until September 2003 when they lost one FTE due to the State's policy on retirement loss of funds. The position had been vacant since December 2002. Currently, the incident investigation program is budgeted for two FTE. The program has had one vacancy since June 2004. The second staff member left the program on February 14, 2005.

To compensate for this loss in staff, Texas has shifted staff from other program areas to assist in the incident investigation review process. This staff is reviewing current investigations performed by field staff for adequacy, participating in the followup of one of the State's significant events, and reviewing old event logs to identify any events not reported. As a result of this review, DSHS has identified areas in their incident investigation program that needs improvement. Management is working to identify solutions to the communication challenges between the groups created by the reorganization so that their investigation program functions in a cohesive manner.

In the meantime, DSHS has posted the two vacancies, but has not scheduled interviews. Management indicated that they expect to conduct the interviews, make the selections, and be fully staffed in incident investigation program by the end of April 2005.

6. Response to Incidents and Allegations:

No allegations have been referred since the 2004 periodic meeting.

7. Status of the following Program areas:

a. **Sealed Source & Device Program**:
There have been no changes to the SSD program since the last periodic meeting, except the responsibility for the program shifted to the Technical Assessment Group as a part of the reorganization.

b. **Uranium Mills Program**: The DSHS mill program has remained basically unchanged since the June 2004 periodic meeting, except the Vasquez site is now in production and production at the Alta Mesa site is expected by September 2005. The three tailings impoundments are under reclamation but continue to have groundwater issues. Waste Control Specialists has submitted an application for disposal of 11(e)2 material and is currently under technical review. DSHS informed the NRC staff of the potential transfer of this program back to Texas Commission on Environmental Quality (TCEQ). DSHS expects to learn the decision at the end of the Legislative session.

c. **Low-Level Waste Program**: Currently, DSHS is responsible for regulating radioactive waste storage and processing. An amendment was issued on February 23, 2005 expanding the storage area for the existing radioactive waste processing and storage facility of Waste Control Specialists.

8. Information exchange and discussion:

a. **Current State Initiatives**:
DSHS has developed a recruitment/retention plan that would create a new health physics classification category at a higher pay scale for technical staff. This proposal was submitted to the Legislature as an exceptional item and is currently going through the legislative process.

b. **Emerging Technologies**:
None since the June 2004 periodic meeting.

c. **Large, Complicated or Unusual Authorization for Use of Radioactive Materials:**
DSHS has not received any applications for irradiators or any other unusual authorizations since the last periodic meeting.

d. **State's Mechanisms to Evaluate Performance**:
DSHS continuously audits performance by performing peer reviews of licensing actions and SSD reviews. In addition, all inspection reports are reviewed by QA Specialists. Licensing actions and QA reviews of inspection reports are electronically tracked. Status of inspections and inspection reports are also electronically tracked. Inspector accompaniments are conducted annually and coordinated between the Radiation Inspection Group and the Radiation Policy, Standards and Quality Assurance Group. The radiation control program management attend a monthly meeting which is facilitated by the Radiation Program Officer to discuss pertinent issues in order to maintain a cohesive program.

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 mid September 2005.