

April 27, 2005

Mr. Albert Hawkins  
Executive Commissioner  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, TX 78711-3247

Mr. Hawkins:

On April 13, 2005, the Management Review Board (MRB) met to consider the results of our March 15, 2005 periodic meeting with the Texas Department of State Health Services (DSHS). The purpose of this meeting was described in our letter to you dated August 27, 2004. In evaluating the results from this meeting and the information provided to the MRB by DSHS staff, we have determined that DSHS should undergo a period of heightened oversight. This decision is based in part on the results of the periodic meeting in March, during which a downward performance trend in materials inspections and incident and allegation investigations was noted. A summary of the programmatic issues that brought upon this action are discussed below. Heightened oversight is an increased monitoring process used by Nuclear Regulatory Commission (NRC) to follow the progress of improvement needed in an Agreement State program. It involves preparation of a program improvement plan, bimonthly conference calls, and submission of status reports prior to each call with the appropriate DSHS and NRC staffs.

The MRB is taking this action based on three key factors (presented below) that the MRB believes is effecting the ability of DSHS to carry out its obligations under the Agreement with the NRC. In addition, the MRB concluded that if these factors are not promptly addressed, the program may be placed in jeopardy of not being able to fulfil its responsibility to protect public health and safety, with respect to the radioactive materials covered by the Agreement.

- Factor 1. DSHS is experiencing a staffing deficit which is effecting a broad range of programmatic activities. Namely, the staffing deficits are effecting DSHS's ability to conduct materials licensee inspections, to investigate incidents involving radioactive materials, to process license requests, and to pursue enforcement actions for violations involving licensed materials in the State. DSHS has seven vacant positions and has experienced a greater than 50 percent turnover rate for environmental specialists in the past year. In addition, there are 10 individuals who had retired and have subsequently come back to work for DSHS, which makes their longevity in the program questionable. DSHS staff expressed that the lack of competitive salaries and the lack of an attractive salary scale for career advancement in the health physics positions makes it extremely difficult to recruit and retain technical employees.
- Factor 2. Related to the problems discussed in Factor 1. above, the program is also experiencing a forced reduction in staff. This forced reduction is due to Texas' policy on retirement loss of funds, which mandates for every one person that retires from the program, the program loses one third of an FTE. Given the amount of recent retirements, and the number of future retirements, DSHS

management indicated that the staffing deficit will continue to worsen. The MRB views this as hampering the long-term ability of DSHS to carry out the functions of the Agreement.

- Factor 3. The Department also recently reorganized due to legislation that was passed in the State of Texas (House Bill 2292). This reorganization has spread out the responsibility of carrying out the radiation protection functions, as required by the Agreement with the NRC, to four organizational units. Due to the restructuring, there no longer exists a management position with direct oversight and authority to effect change in all areas of Texas responsibility under the Agreement. This fracturing of programmatic duties has lead to a notable decline in program oversight and performance.

We request that you prepare and submit a program improvement plan to address the following items that are out of standard with criteria as established in the NRC Management Directive (MD) 5.6, Integrated Material Performance Evaluation Program (IMPEP).

1. The MRB recommends that DSHS develop and implement a staffing plan to competitively fill current vacancies, address the high rate of staff turnover, and maintain long-term program stability in staffing.
2. The MRB recommends that DSHS take appropriate measures to conduct Priority I, II, and III inspections, including initial inspections, in accordance with the NRC's inspection priority system.
3. The MRB recommends DSHS develop and implement a plan to account for the programmatic burden of the new two-year administrative and ten-year technical renewal of all materials licenses that Texas legislative bill, HB 2292, will place on the program. In particular, the FTE allotment for the additional licensing actions and inspections that will be required to locate, renew or terminate licensees that do not send in renewal information or fees as required by the new two-year requirement.
4. The MRB recommends that DSHS take appropriate measures to promptly investigate, document and report, in accordance with NRC regulations, incidents involving the use of radioactive materials.
5. The MRB recommends that DSHS promulgate, and submit to NRC for review, all overdue regulations and develop a plan to account for future adoption of NRC amendments in the required time frames.

I ask that you have your staff communicate with Mr. Paul Lohaus on the required elements of this plan to ensure that the "get-well" path and measures of success are clearly identified. The plan should be submitted within 30 days of this letter. Upon review of the program improvement plan, the staff will schedule the first conference call. The initial conference call should be scheduled and conducted no later than June 30, 2005.

The DSHS IMPEP review will take place in September 2005. In addition to reviewing the status of the corrective actions required by the heightened oversight process, an in-depth program review will be performed in accordance with the IMPEP criteria as established in the MD 5.6. As an outcome of this review, the program will be evaluated as to whether the program is

adequate to protect public health and safety and compatible with the NRC program. The results of this IMPEP review could lead to further action on the part of the NRC, including placing DSHS on probation, and possible suspension of the Agreement with the NRC

I appreciate the courtesy and cooperation extended to the NRC representatives during the periodic meeting and your continuing support of the Texas DSHS. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

***/RA/Martin J. Virgilio***

Martin J. Virgilio  
Deputy Executive Director  
for Materials, Research and State Programs  
Office of the Executive Director for Operations

cc: Eduardo Sanchez, M.D., M.P.H, Commissioner  
Texas Department of State Health Services

Richard Bays, Assistant Commissioner  
Regulatory Programs  
Texas Department of State Health Services

Roger Mulder, State Liaison Officer

Richard A. Ratliff, P.E., L.M.P.,  
Radiation Program Officer  
Division for Regulatory Services  
Texas Department of State Health Services

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