



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

EDUARDO J. SANCHEZ, M.D., M.P.H.  
COMMISSIONER

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May 24, 2005

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

Dear Mr. Lohaus:

This is in response to the letter from Martin J. Virgilio dated April 27, 2005 relating to heightened oversight of the Department of State Health Services' (DSHS) radiation control program. Enclosed is the requested program improvement plan that addresses the three key factors and five specific items identified by NRC as the reasons for the heightened oversight.

The DSHS radiation control program has and continues to provide regulatory oversight that is protective of the public health and safety of the citizens of Texas.

DSHS has informed the NRC during previous IMPEP reviews and meetings that the root cause of several of the identified issues is the continuing difficulty in recruiting and retaining technical employees with health physics knowledge and experience. This difficulty is directly related to the lack of competitive salaries and adequate salary scales. The program improvement plan provides details of proposed legislative initiatives to remedy this problem.

However, DSHS disagrees with the third factor NRC identified as one of the three key factors effecting DSHS' ability to carry out its obligations under the Agreement with NRC. NRC states, "This fracturing of programmatic duties has lead to a notable decline in program oversight and performance." While the department did undergo reorganization effective September 1, 2004, the program has reported the pre-existing difficulty in recruiting and retaining technical employees to NRC during the last two full IMPEP reviews of the program. This issue existed prior to the departmental reorganization and cannot be attributed to the reorganization.

NRC also states in the third factor, "Due to 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 is incorrect. The Radiation Program Officer was established as the subject matter expert for radiation control issues and is responsible for facilitating a cohesive radiation control program across the organizational units in the Division of Regulatory Services. This position is designated as the radiation control program director and reports directly to the Assistant Commissioner, Division of Regulatory Services. Therefore, this position has the oversight and authority to effect radiation control program changes through the Assistant Commissioner.

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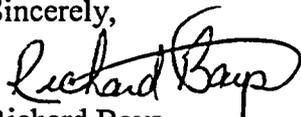
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With regard to two of the specific elements concerning incident investigation and rulemaking, all incidents and complaints have been appropriately investigated and all but two compatibility rules have been adopted by the department. The issues identified by NRC appear to only involve reporting of incidents to NRC and submission of some rules for review by NRC.

We look forward to the first conference call with your office concerning our program improvement plan. If you have questions concerning the plan, please contact Richard. A. Ratliff, P.E., Radiation Program Officer at (512)834-6688, extension 6679.

Sincerely,



Richard Bays  
Assistant Commissioner  
Division for Regulatory Services

Enclosure

cc: Albert Hawkins, Executive Commissioner  
Eduardo J. Sanchez, M.D., M.P.H., Commissioner  
Roger Mulder, State Liaison Officer  
Martin Virgilio, NRC

### Recommendation #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.

### Discussion

In 2004, the department implemented a short-term and long-term initiatives to retain health physics staff. For the short-term, all technical staff were given a 6.8% merit pay increase.

DSHS has developed a recruitment/retention plan that would create a new health physics classification category at a significantly higher pay scale for technical staff, so that we could be more competitive with industry and the federal government. This proposal was submitted to the State Classification Office for approval. The proposed classification was accepted and sent to the Texas Legislature for approval. Proposed funding for the health physicist classification was submitted to the Legislature as an exceptional item and is currently going through the legislative process. The plan also includes an intern program. The intern program is intended to provide intern opportunities to high school and college students interested in health physics and other scientific-related fields to interest them in a career in public health regulatory service. This longer-term initiative could to be passed by the Texas Legislature on or before May 30, 2005.

### Action Items and Milestones

- a. Action: Monitor the progress of the legislative appropriations and classification bills.  
Milestone: On-going; 79th Legislative session will end May 30, 2005
- b. Action: Initiate rulemaking to increase fees to recover additional appropriations.  
Milestone: June 1, 2005
- c. Action: Prepare reclassification/salary upgrade paperwork for processing.  
Milestone: June 15, 2005
- d. Action: Submit reclassification/salary upgrade paperwork.  
Milestone: July 15, 2005
- e. Action: Implement reclassification/salary upgrades.  
Milestone: November 1, 2005  
and implementation of fee increase.
- f. Action: Develop concept of intern program as a recruitment tool in radiation control  
Milestone: September 1, 2005
- g. Action: Implement radiation control intern program.  
Milestone: Summer 2006
- h. Action: Develop a plan for succession training for radiation control.  
Milestone: December 2005
- i. Action: Continue to implement a succession training program.  
Milestone: March 2006

## Recommendation #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.

## Discussion

As discussed in Recommendation #1, the department has implemented a short-term and long-term initiative to address staff recruitment and retention. The radiation control program is using re-assigned staff in addition to current inspection staff to eliminate the inspection backlog.

Training new inspectors is a challenge due to the high cost of tuition and out-of-state travel. In response to this, the program has sponsored and supports several NRC courses or equivalent training. The Baylor Health Physics course is an example. The department has co-sponsored the Well Logging course and this year will be sponsoring the Inspection Procedures course and possibly the Transportation course.

## Action Items and Milestones

- a. Action: Submit vacant inspector positions for posting.  
Milestone: May 31, 2005 **Completed**
- b. Action: Begin to interview and fill vacant inspector positions.  
Milestone: July 1, 2005
- c. Action: Provide classroom training for new and not yet fully qualified inspectors.  
Milestone: As NRC courses or equivalent become available
- d. Action: Develop schedule for on-the-job training for new and not yet fully qualified inspectors.  
Milestone: June 15, 2005
- e. Action: Determine overdue inspections based on NRC priority system vs. Texas system.  
Milestone: June 1, 2005
- f. Action: Assign overdue inspections to be performed.  
Milestone: May 31, 2005
- g. Action: Perform overdue inspections.  
Milestone: Based on assignments in item 2.f.

### Recommendation #3

The MRB recommends that 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.

### Discussion

HB2292 requires that all licenses issued by the department be for a two-year interval and that all licensing costs be recovered through licensing fees. Payment of the fee constitutes renewal of the license. Technical reviews of licenses to ensure adequate licensee commitments to radiation safety will be completed at 10-year intervals, which the department believes is appropriate and which is consistent with NRC practice.

To implement HB2292 and to continue technical license reviews, the department adopted a two-year administrative license renewal and a 10-year technical license renewal. Upon payment of the fee and having an acceptable compliance history, a license is administratively renewed by changing the expiration date on the license document. The technical review will be conducted every ten years to include in-depth technical reviews of procedures, environmental reports, facilities, equipment, and compliance histories.

### Action Items and Milestones

- a. Action: Research, evaluate, and recommend staffing adjustments to department.  
Milestone: Recommendations by September 1, 2005
- b. Action: Request that IT update current automated system to provide for administrative license renewals.  
Milestone: June 1, 2005
- c. Action: Include automated system for administrative license renewals in new integrated regulatory system.  
Milestone: September 2006

### Recommendation #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.

### Discussion

All incidents and complaints have been and are appropriately investigated, reviewed, and forwarded for enforcement by the program. Other radiation control staff members have been utilized and responses to incidents and complaints have ensured that public health and safety have not been compromised. Due to staffing vacancies, incident information and investigation results have occasionally not been reported to NRC's Nuclear Materials Events Database (NMED) within NRC's required time frames.

### Action Items and Milestones

- a. Action: Fill the two vacant Environmental Specialist V positions in the Incident Investigation Program. **Completed**  
Milestone: May 2, 2005
- b. Action: Review NMED data to complete all database files.  
Milestone: August 1, 2005
- c. Action: Submit report to NRC identifying issues with NMED reporting requirements.  
Milestone: September 1, 2005
- d. Action: Research, evaluate, and recommend staffing adjustments to department.  
Milestone: Recommendations by September 1, 2005

### Recommendation #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.

### Discussion

The department has promulgated all but two of the compatibility items that are due. One of the rules was due to be promulgated by February 2003 and the other by April 2005. Both rules involve an amendment to one section of the Texas rules. That amendment was delayed to promulgate other rule amendments in order to implement legislative changes made during the 78th legislative session in 2003. The two rules that are due to be promulgated are currently in the department's rulemaking process.

For most of the compatibility rules, both proposed and final rules have been transmitted to NRC for review. In some cases, NRC has documentation that proposed rules have been submitted for review, but the final rules have not been submitted.

### Action Items and Milestones

- a. Action: Review rulemaking case files to find documentation of proposed and final rules transmitted to NRC. **Completed**  
Milestone: May 16, 2005
- b. Action: Submit documentation of transmittal of proposed or final rules of concern to NRC and/or final rules of concern to NRC for their review.  
Milestone: May 31, 2005
- c. Action: Propose the two NRC compatibility rules that are overdue.  
Milestone: August 2005
- d. Action: Continue to ensure tracking of transmittal of proposed and final rules to NRC for their review.  
Milestone: On-going

## Milestone Timeline

<u>Due by</u>	<u>Item #</u>	<u>Action Item</u>
<u>May 2005</u>		
2	4.a.	Fill the two vacant Environmental Specialist V positions in the Incident Investigation Program. <b>Completed</b>
31	2.a.	Submit vacant inspector positions for posting. <b>Completed</b>
	2.f.	Assign overdue inspections to be performed.
	5.b.	Submit documentation of transmittal of proposed or final rules of concern to NRC and/or final rules of concern to NRC for their review.
16	5.a.	Review rulemaking case files to find documentation of proposed and final rules submitted to NRC. <b>Completed</b>
30	1.a.	Texas Legislature ends.
<u>June 2005</u>		
1	1.b.	Initiate rulemaking to increase fees to recover additional appropriations.
	2.e.	Determine overdue inspections based on NRC priority system vs. Texas system.
	3.b.	Request that IT update current automated system to provide for administrative license renewals.
15	1.c.	Prepare reclassification/salary upgrade paperwork for processing.
	2.d.	Develop schedule for on-the-job training for new and not yet fully qualified inspectors.
<u>July 2005</u>		
1	2.b.	Begin to interview and fill vacant inspector positions.
<u>August 2005</u>		
	5.c.	Propose the two NRC compatibility rules that are overdue.
1	4.b.	Review NMED data to complete all database files.

September 2005

- 1 1.f. Develop concept of intern program as a recruitment tool in radiation control.
- 3.a. Research, evaluate, and recommend staffing adjustments to department.
- 4.c. Submit report to NRC identifying issues with NMED reporting requirements.
- 4.d. Research, evaluate, and recommend staffing adjustments to department.

November 2005

- 1 1.e. Implement reclassification/salary upgrades.

December 2005

- 1.h. Develop a plan for succession training for radiation control.

March 2006

- 1.i. Continue to implement a succession training program.

Summer 2006

- 1.g. Implement radiation control intern program.

September 2006

- 3.c. Include automated system for administrative license renewals in new integrated regulatory system.

Other

<u>Timeframe</u>	<u>Item #</u>	<u>Action</u>
As NRC courses or equivalent become available	2.c.	Provide classroom training for new and not yet fully qualified inspectors.
Based on assignments in item 2.f.	2.g.	Perform overdue inspections.
On-going	5.d.	Continue to ensure tracking of transmittal of proposed and final rules to NRC for their review