

August 18, 2005

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

Karen D. Cyr, General Counsel

Jack R. Strosnider, Director
Office of Nuclear Material Safety and Safeguards

Paul H. Lohaus, Director
Office of State and Tribal Programs

FROM: Dennis K. Rathbun, Deputy Director */RA/*
Office of State and Tribal Programs

SUBJECT: INTEGRATED MATERIALS PERFORMANCE EVALUATION
PROGRAM (IMPEP) REVIEW OF THE NEW MEXICO
RADIATION CONTROL PROGRAM

This memorandum transmits to the Management Review Board (MRB) a proposed final report (Attachment 1) documenting the IMPEP review of the New Mexico Radiation Control Program. The review of the New Mexico program was conducted by an interoffice team during the period of June 6-10, 2005. The team issued a draft report to New Mexico on July 8, 2005 for factual comment. New Mexico responded to the findings and conclusions of the review by E-mail dated August 9, 2005, from Mr. Walter Medina, Program Manager, New Mexico Radiation Protection Program. Based on the E-mail, New Mexico had no comments on the draft report.

The review team found New Mexico's performance to be satisfactory for five of the performance indicators reviewed and satisfactory but needs improvement for one indicator. Accordingly, the review team recommends that the New Mexico Agreement State program to be found adequate to protect public health and safety and compatible with NRC's program.

The MRB meeting to consider the New Mexico report is scheduled for **Thursday, August 25, 2005, from 1:00 p.m. to 3:00 p.m., in One White Flint North, Room O-3B4**. In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for that meeting is attached (Attachment 2).

If you have any questions prior to the meeting, please contact me at 301-415-2325 or Mr. John Zabko at 301-415-2308.

Attachments:
As stated

cc: Ana Marie Ortiz, Director
Field Operations Division

Edgar Bailey, CA
OAS Liaison to the MRB

John Parker, Bureau Chief
Radiation Control Bureau

Management Review Board Members

August 18, 2005

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF THE NEW MEXICO AGREEMENT STATE PROGRAM

June 6 - 10, 2005

Proposed Final Report

U.S. Nuclear Regulatory Commission

ATTACHMENT 1

1.0 INTRODUCTION

This report presents the results of the review of the New Mexico radiation control program. The review was conducted during the period of June 6 -10, 2005, by a review team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Kansas. Team members are identified in Appendix A. The review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of a Final General Statement of Policy," published in the Federal Register on October 16, 1997, and the February 26, 2004, NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the review, which covered the period June 22, 2001 to June 10, 2005, were discussed with New Mexico management on June 10, 2005.

[A paragraph on the results of the Management Review Board (MRB) meeting will be included in the final report.].

The New Mexico Agreement State Program is administered by the Radiation Control Bureau (the Bureau) in the Field Operations Division (the Division) of the New Mexico Environment Department (the Department). The day-to-day operations are carried out by the Radiation Protection Program (the Program) which is headed by the Program Manager, who reports to the Bureau Chief. Organization charts for the Department and the Bureau are included as Appendix B.

At the time of the review, the New Mexico Agreement State Program regulated approximately 194 specific licenses authorizing Agreement materials. The review focused on the materials program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New Mexico.

In preparation for the review, a questionnaire addressing the common and non-common performance indicators was sent to the Program on March 23, 2005. The Program provided a response to the questionnaire on May 23, 2005.

The review team's general approach for conduct of this review consisted of: (1) examination of the Program's response to the questionnaire; (2) review of applicable New Mexico statutes and regulations; (3) analysis of quantitative information from the Program licensing and inspection data base; (4) technical review of selected licensing and inspection actions; (5) field accompaniments of three Program inspectors; and (6) interviews with staff and management to answer questions or clarify issues. The team evaluated the information that it gathered against the IMPEP performance criteria for each common and non-common performance indicator and made a preliminary assessment of the Program's performance.

Section 2 below discusses the Program's actions in response to recommendations made following the previous review. Results of the current review for the IMPEP common performance indicators are presented in Section 3. Section 4 discusses results of the applicable non-common performance indicators, and Section 5 summarizes the review team's findings. Recommendations made by the review team are comments that relate directly to performance by the Program. A response is requested from the Program to all recommendations in the final report.

2.0 STATUS OF ITEMS IDENTIFIED IN PREVIOUS REVIEWS

During the previous IMPEP review, which concluded on June 18-22, 2001, one recommendation was made and transmitted to Mr. Mike Koranda, Director, Field Operations Division, New Mexico Environment Department, on September 26, 2001. The team's review of the current status of this recommendation is as follows:

- (1) The team recommended that the State adopt the regulations, or other legally binding requirements, which are overdue for adoption.

Current Status: The Program has adopted all the regulations needed for adequacy and compatibility that were due during this review period. The current status of the Program's regulations is further discussed in Section 4.1. The team recommends that this recommendation be closed.

3.0 COMMON PERFORMANCE INDICATORS

IMPEP identifies five common performance indicators to be used in reviewing both NRC Regional and Agreement State programs. These indicators are: (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

3.1 Technical Staffing and Training

Issues central to the evaluation of this indicator include the Program's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate these issues, the review team examined the Program's questionnaire responses, interviewed Program management and staff, reviewed job descriptions, training plans, and training records. The review team also considered any possible workload backlogs in evaluating this indicator.

The Program is authorized for eight positions. These positions include one Program Manager and seven Environmental Specialists. All technical staff positions require a bachelor's degree in one of the sciences. Positions are classified as either Environmental Specialists, requiring four years experience, or as Environmental Scientists, requiring two years experience. Based on experience and training, staff are categorized as Basic, Operational or Advanced Environmental Specialists. Currently the Program staff is made up of all Environmental Specialists consisting of four Advanced, and three Operational qualified Environmental Specialists. There is currently one vacant staff position. Of the six Environmental Specialists working in the Program, one has 15 years experience with the program, one has eight years experience, three have 1-2 years experience and there is one new staff member who has worked in the Program for one month. With the exception of the one new staff, all of the Environmental Specialists have 25-30 years of experience in operational radiation safety and health physics. The Program Manager worked for the Program as an Environmental Specialist for eleven years before being promoted to the position in January 2005.

The staff is responsible for both the radioactive materials and the x-ray regulatory programs. Approximately 50 percent of each staff's time is allocated to the radioactive materials area. All staff perform duties in inspection and event response with one staff member assigned primarily to licensing. Another staff member is being trained as a back-up for the licensing position. The inspection work load is split among four staff with the new member assisting as part of a staff on-the-job training program.

Three staff members left during the review period, and two of the positions were filled. The Program has authority to fill the remaining vacancy. At the time of the review, a notice to post the position was being developed, and the Program Manager expected the position to be filled in the near future. The Program staff has increased by two positions since the 2001 IMPEP. The Program Manager indicated that the Program plans to increase the staff by one to two positions in the future. Due to the adoption of a revised fee rule in 2002, the Program has dedicated funds to be used in areas such as hiring and staff training.

Prior to the establishment of the dedicated fund in 2002, there was limited opportunity for Program staff to attend NRC training courses. Due to the availability of funds resulting from the fee rule, the Program Manager indicated that staff has started, and will continue to attend NRC training courses. With the exception of the newest member of the staff, all of the Program's inspectors have attended the NRC's licensing practices and procedures and the NRC's Inspection procedures courses or have had equivalent training. The team discussed with the Program Manager the use of alternate training methods, in addition to the NRC courses, to meet the needs of the Program. These alternate methods included the use of the Program's two senior inspectors to mentor the junior inspectors (using on-the-job training) and attending training being offered in-State by vendors and local colleges. Even though the inspection staff has many years of health physics experience, four of the six inspectors have less than two years experience in the type of radioactive materials licensees that the program regulates (e.g., radiography, well logging and complex medical). The Program Manager indicated that they would consider these alternatives as a solution to meet the short term staff training needs.

The Program has a documented training and qualification program, "Radioactive Materials Licensing and Inspection Qualification Procedure, Version 2, June 3, 1999." This procedure is comparable to NRC's Inspection Manual Chapter (MC) 1246, "Formal Qualification Programs in the Nuclear Material Safety and Safeguards Program Area." The team reviewed the qualification journals that the Program uses for the staff. The review team found that the staff are well qualified, with two senior staff being fully qualified and the rest of the staff working toward full qualification.

The Program receives advice and direction from two advisory panels, the Radiation Technical Advisory Council (the Council) and the Environmental Improvement Board (the Board). The Council members are required to have scientific or medical backgrounds, and they may be authorized users on radioactive materials licenses. Currently, there are no radioactive materials licensees serving on the Council or the Board. To avoid any conflicts of interest, the Program plans to maintain the membership of advisory panels free of licensees.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

3.2 Status of Materials Inspection Program

The team focused on four factors in reviewing this indicator: inspection frequency, overdue inspections, initial inspections of new licenses, and timely dispatch of inspection findings to licensees. The evaluation is based on the Program's questionnaire responses relative to this indicator, data gathered independently from the Program's licensing and inspection data tracking system, the examination of completed licensing and inspection casework, and interviews with Program Manager and staff.

The review of the Program's inspection priority policy verified that the New Mexico inspection frequencies for various types or groups of licenses are as frequent as, or more frequent than, similar license types or groups listed in NRC MC 2800. The Program requires more frequent inspections as described in the following license categories: wireline (well logging) services are inspected at two-year intervals compared to NRC's three year intervals; all broad scope licenses are inspected at two-year intervals compared to NRC's three-year intervals for type A broad academic licenses and five-year intervals for type B and type C broad academic licenses; self shielded irradiators greater than 10,000 curies are inspected at one-year intervals and self shielded irradiators less than or equal to 10,000 curies are inspected at two-year intervals as compared to NRC's five-year intervals for all self shielded irradiators; medical licenses authorized for therapy are inspected at one-year intervals compared to NRC's three-year intervals; and portable gauges are inspected at two-year intervals compared to NRC's five-year intervals.

The Program's inspection priority policy for decommissioning and reclamation service licenses also differs from that listed in NRC MC 2800. The Program requires that this type of license be inspected at two-year intervals compared to NRC's requirement that inspections be scheduled at times when the licensee is performing decommissioning activities, as determined under NRC MC 2602, "Decommissioning Inspection Program." The review team determined that, for the review period, the difference in inspection frequencies for this type of license was not an issue because of the limited scope of materials decommissioning activities conducted.

During the review period, 180 priority 1, 2, and 3 inspections were conducted; and 44 initial inspections were conducted. With two exceptions, all the initial inspections were conducted within 12 months of the date each new license was issued. These two overdue inspections were discussed with the Program Manager and he committed to conduct inspections of these licensees as soon as possible.

In the questionnaire, the Program indicated that three inspections were overdue by more than 25 percent of the inspection interval. However, because the Program's inspection intervals are generally more frequent than those in NRC MC 2800, the review team found that only one inspection was overdue in accordance with the NRC inspection criteria; and that this inspection was not listed on the response to the IMPEP questionnaire provided by the Program. This was verified during the inspection casework reviews, and review of the Program's Registration and Licensing database.

The team reviewed 16 inspection files and found that the Program dispatches inspection findings to the licensees within 5 to 10 days after the inspection.

In the questionnaire, the Program reported receiving 160 requests for reciprocity during the review period, of which 142 were from licensees with priorities 1, 2 and 3. The Program conducted 49 inspections, or 35 percent, of the “candidate” reciprocity licensees, which exceeds the NRC MC 1220 goal for reciprocity inspections.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico’s performance with respect to the indicator, Status of the Materials Inspection Program, be found satisfactory.

3.3 Technical Quality of Inspections

The team evaluated inspection reports, enforcement documentation, and interviewed inspectors associated with 16 radioactive materials inspections conducted during the review period. The casework included work performed by all of the Program’s materials license inspectors, and covered a variety of license types including: academic broad; medical (broad scope and institutional); nuclear pharmacy; industrial radiography; pool irradiator; wireline services; and research and development. Appendix C lists the inspection casework reviewed for completeness and adequacy with case-specific comments, as well as the results of the inspection accompaniments.

Based on the casework reviewed, the review team noted that the routine inspections covered all aspects of the licensees’ radiation programs. The review team found that inspection reports were very thorough, complete, consistent, and of high quality, with sufficient documentation to ensure that the licensee’s performance with respect to health and safety was acceptable. Generally, the documentation supported violations and unresolved safety issues. During the review, the team found that some of the files were misfiled and had missing documentation, (e.g., response letters from the licensees). These files are listed in Appendix C. The team mentioned these files with missing documentation to the Program Manager and these files were corrected.

The Program uses team inspections for larger and complex licensees as well as for training purposes. Inspection reports are in a format that covers all inspection areas for each inspection type. Inspectors consistently document their observation of licensed activities and the results of confirmatory measurements. Completed inspection reports were signed by either the Program Manager or the Bureau Chief. Supervisory accompaniments are being conducted annually for all inspectors.

Licensees are required to respond to all Notices of Violations (NOV). All inspection findings are documented in the report, and reviewed by the Program Manager before being sent to the licensee with the letter detailing the results of the inspection.

The team found one occurrence where an initial inspection was conducted in 1997, and at that time the inspector was told by the licensee’s radiation safety officer that no licensed material was on site. Future attempts to inspect the licensee were unsuccessful, and no other inspections were conducted by the Program. However, in 2000 and again in 2005, the same licensee requested license renewals and requested to increase the possession limits on the license. NRC MC 2800 requires that initial inspections be completed within 12 months of the date the new license to determine if licensed material has been possessed or licensed

operations have been performed. If it is determined that the licensee has not possessed licensed material or performed licensed operations, the Program should schedule the next inspection within one year. This issue was discussed with management, and they indicated that they would put the inspection of this licensee at a higher priority.

The Program has adequate numbers and types of radiation survey instruments to support their efforts. The review included a check of survey instruments and equipment monitoring, including calibration frequency and repairs. The Program's instruments include G-M meters, scintillation detectors, ion chambers, micro-R meters, and neutron meters. The review found that many of the instruments are not calibrated and are out-of-service, and that the instruments were not labeled as such. The instruments were kept in the same location as the calibrated instruments. This issue was discussed with Program management who stated that the out-of-service, uncalibrated instruments would be segregated and labeled appropriately. The Program contracts for instrument calibration and repair with authorized calibration and repair companies. Contamination wipes are sent to the State's Scientific Laboratory Division for analysis.

Three Program inspectors were accompanied during inspections by a review team member during the week of May 9 -13, 2005. Inspection accompaniments included two medical institutions and a nuclear pharmacy. These accompaniments are identified in Appendix C. During the accompaniments, each inspector demonstrated appropriate performance based inspection techniques and knowledge of the regulations. The inspectors were trained, prepared, and thorough in their audits of the licensees radiation safety program. Interviews with licensee personnel were performed in an effective manner, and the inspections were adequate to assess radiological health and safety at the licensed facilities. Overall, each inspector utilized good health physics practices.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Inspections, be found satisfactory.

3.4 Technical Quality of Licensing Actions

The review team examined completed licensing casework and interviewed the staff for 15 specific licenses. Licensing actions were evaluated for completeness, consistency, proper isotopes and quantities used, qualifications of authorized users, adequate facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions. Licenses were evaluated for overall technical quality including accuracy, appropriateness of the license, license conditions, and tie-down conditions. Casework was evaluated for timeliness; adherence to good health physics practices; reference to appropriate regulations; documentation of safety evaluation reports, product certifications or other supporting documents; consideration of enforcement history on renewals; pre-licensing visits, peer or supervisory review as indicated; and proper signature authority. The files were checked for retention of necessary documents and supporting data.

The licensing casework was selected to provide a representative sample of licensing actions that were completed during the review period. The sampling included the following types: well logging, industrial radiography, medical institution, medical private practice and broadscope, nuclear pharmacy, academic, irradiator, research and development, analytical, stationary and

portable gauge. Licensing actions included three new licenses, five amendments to existing licenses, six license renewals and one termination. A list of the licenses evaluated with case-specific comments can be found in Appendix D.

The Program has recently revised licensing procedures and license reviewer's procedures. Some application forms were revised, and all licensing forms were revised. Revised documents were entered into the database for accessibility by technical staff. Revision of standard license conditions is an ongoing process to ensure conditions are current. Licensing templates are set up for more efficient writing of new and amended licenses. The human use licensing guidance was revised using the NUREG 1556, Volume 9: "Program-Specific Guidance About Medical Use Licenses (Draft Report for Comment)" as the reference. Checklists based on NUREG 1556 are used as guidance.

Overall, the review team found that the licensing actions were thorough, complete, consistent, and of acceptable quality with health and safety issues properly addressed. License tie-down conditions were stated clearly, backed by information contained in the file, and available for use by the inspectors. The licensee's compliance history was taken into account when reviewing renewal applications and amendments. Reviewers appropriately used the State's licensing guides, license templates, standard conditions and checklists. No potentially significant health and safety issues were identified.

The team observed written correspondence between the reviewer and the licensee to resolve identified deficiencies through requests for additional information. The team did not observe any performance issue, and noted that most license reviews were conducted by a single staff member, and all licenses were signed by the Program Manager.

The Program renews licenses every five years. All licensing actions were completed in a timely manner. The review team noted that most licensing actions were issued within days of the requested action, and that no license action exceeded 60 days.

The review team observed that licensees are allowed to renew their license for an additional five year period by providing a statement that no changes have occurred since the last amendment. Typically, a current radioactive material inventory is requested for the renewal to be granted. The review team observed that license renewals were not being performed in their entirety in some cases for many decades. The Program procedure for filing an application for specific licenses is based on New Mexico regulation 20.3.3.307. The Program procedure for performing renewal of licenses states in part: "If a license has not had any changes, a letter requesting renewal is sufficient..." In every case reviewed, many changes to the license had occurred over time even though there were no changes since the last amendment. Staff had only been referencing the time since the last amendment to evaluate if there had been changes to the license, not the entire period since the last renewal. Following discussions with the team, the Program management and staff agreed that the current practice is not appropriate and they indicated that they have recently changed their practice to request a completed application for renewal of licenses. However, the review team noted that in the new draft licensing procedure, the referencing of previously submitted information is still allowed during license renewal. This was also discussed with Program management and they indicated they would modify their procedure to not allow referencing of the past license in the renewal.

The review team recommends that when license renewals are performed the Program reviews the license in its entirety to ensure an accurate representation of the licensee's radioactive materials program is on file. This will also prevent loss of tie-down information in the license and ensure correct documentation is captured in the license conditions.

The review team observed that the closeout survey was not performed for one terminated medical license reviewed. Twelve additional licenses, that were terminated during the review period, were reviewed to verify if the lack of a closeout survey was a programmatic issue or an isolated occurrence. Three of the twelve licenses reviewed were found to not contain documented disposition of radioactive material including a closeout survey or current leak test and transfer to authorized licensee. These three licensees were brought to the attention of the Program Manager. The Program Manager committed to investigate these licenses further and close them out appropriately.

The review team recommends that the Program retrain its staff with regard to following its established procedure for termination of radioactive material licenses and follow-up actions by the inspectors regarding closeout surveys or additional documentation to support the termination request.

The review team observed that the Program re-uses license numbers. In one file reviewed, a licensee terminated a radioactive material license and several years later applied for a new license. The new license was issued with the same license number previously issued to this licensee starting with amendment zero. This practice could lead to confusion from a historical perspective. This was discussed with Program management and they agreed to issue new license numbers in these cases.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory with recommendation for improvement.

3.5 Technical Quality of Incident and Allegation Activities

In evaluating the effectiveness of the Program's actions in responding to incidents, the review team examined the Program's response to the questionnaire relative to this indicator, evaluated selected incidents reported by New Mexico to the Nuclear Materials Events Database (NMED) against those contained in the Program's files, and evaluated the casework and supporting documentation for nine materials incidents. A list of the incident casework examined with case-specific comments is included in Appendix E.

The Program received 22 materials event reports which were reportable under IMPEP criteria during the review period. The Program's response to the IMPEP questionnaire indicated that two of these events had not been reported to the NMED. The Program Manager took action to enter these events into the NMED system prior to the on-site portion of the review. The events which were selected for review included lost or stolen radioactive material, a potential overexposure, and licensed material which had been abandoned. The review team found that the Program's response to events was complete and comprehensive. Initial responses were prompt and well coordinated and the level of effort was commensurate with the health and safety significance of the event. The Program dispatched inspectors for on-site investigations when appropriate. Actions were coordinated with other agencies as appropriate.

The Program followed written procedures for responding to events. The procedures addressed the actions to be taken upon the notification of an event, the event tracking system, event evaluation and investigation, documentation, notification to the NRC Operations Center, and the reporting of events to the NMED. The Program's procedure is currently being reviewed and updated. The team noted minor deficiencies in the casework, as noted in Appendix E.

The team noted that the Program has copies of the Handbook to the Office of State and Tribal Programs (STP) Procedure SA-300, "Reporting Material Events." With the exception of two events, copies of event reports were sent to the NMED contractor. The team noted, however, that the staff member responsible for entry of events into NMED left the Program in May 2005. The Program Manager has not yet identified a staff member to take over this responsibility. The Program Manager and the Bureau Chief received NMED training in April 2005 and the Program Manager has recently taken on responsibility for entry of events into NMED until another staff member is selected.

During the review period, the Program received seven allegations and an additional two NRC-referred allegations. The review team evaluated the Program's response to these allegations and determined that the Program took prompt and appropriate action in response to the concerns raised and appropriately protected the alleged's identity. The team was unable to locate the follow-up documentation for one of the NRC-referred allegations during the evaluation of the Program's incidents and allegation files. The Program Manager indicated that he did not have any record of receiving the first NRC-referred allegation. However, the second NRC referred allegation was a duplicate of the first, concerning the same issue, only differing by the date submitted. The Program Manager indicated that this may have been the cause of the confusion. The Program took adequate steps to investigate the second NRC-referred allegation and closed it out. The team found that the Program closes out allegations appropriately including a response letter to the alleged.

The team found that responsibility for initial response and follow-up actions to materials incidents and allegations rested solely with the Program. The staff members evaluate incidents and allegations, then determine the appropriate response through discussion with the Program Manager. The Program staff evaluates all incidents reported and investigates any incident that has a potential for affecting public health and safety.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

4.0 NON-COMMON PERFORMANCE INDICATORS

IMPEP identifies four non-common performance indicators to be used in reviewing Agreement State programs: (1) Compatibility Requirements (2) Sealed Source and Device Evaluation Program; (3) Low-Level Radioactive Waste Disposal Program; and (4) Uranium Recovery Program. New Mexico's Agreement does not cover the sealed source and device evaluation program or uranium recovery operations, so only two non-common performance indicators were applicable to this review.

4.1 Compatibility Requirements

4.1.1 Legislation

In evaluating this indicator the team reviewed Program's responses to the IMPEP questionnaire, the information contained on the States Regulation Status (SRS) data sheet as maintained by the Office of State and Tribal Programs and the New Mexico statutes applicable to radiation control.

The New Mexico Radiation Protection Act authorizes the Board and the Department, through the Governor, to enter into the agreement with the NRC. The law designates the Board as the radiation control agency for the State of New Mexico, with the Department carrying out the day-to-day responsibilities. The review team noted that no new legislation was passed since last review, which would affect the Agreement State program or its authority.

4.1.2 Program Elements Required for Compatibility

The New Mexico Rules for Radiation Protection apply to all ionizing radiation, whether emitted from radionuclides or devices. New Mexico requires a license for possession, and use, of all radioactive material including naturally occurring materials, such as radium, and accelerator-produced radionuclides.

The review team interviewed Program staff and examined the procedures used to adopt rules. Draft rules are first reviewed by the Council and with their consent, the Program proposes adoption of the draft rules. The Council must approve all rule changes before the process for rule promulgation can proceed. Members of the public and other interested parties are offered an opportunity to comment on proposed rules. The Board is the rule promulgating authority for radiation and all other Department programs.

Public notice of proposed new or revised rules is given at least 60 days prior to a public hearing before the Board. When the Board approves the proposed rules, they are filed with the Secretary of State and become effective in 30 days. The Program sends the proposed rules to NRC when they are publicly noticed. Final rules are sent to NRC after they are filed with the Secretary of State. The Program maintains documentation of transmitting the draft and final rules to NRC.

The team found that the Program has adopted, and sent in for NRC review, all of the regulations that were due for Agreement State adoption during this review period.

The following regulations will become due in the future and are included here to assist the State in including them in future rulemakings or by adopting alternate generic legally binding requirements:

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, and 35 amendment (67 FR 20249) that became effective October 24, 2002.
- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327) that became effective December 3, 2003.

- “Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments,” 10 CFR Part 71 amendment (69 FR 3697) that became effective October 1, 2004.
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR 30 amendment (70 FR 2001) that became effective July 11, 2005.
- “Medical Use of Byproduct Material - Recognition of Specialty Boards,” - Part 35 amendment (70 FR 16336) that became effective April 29, 2005.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico’s performance with respect to the indicator, Compatibility Requirements, be found satisfactory.

4.2 Low-Level Radioactive Waste (LLRW) Disposal Program

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement" to allow a State to seek an amendment for the regulation of LLRW as a separate category. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need of an amendment. Although New Mexico has LLRW disposal authority, NRC has not required States to have a program for licensing a LLRW disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, they are expected to put in place a regulatory program which will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in New Mexico. Accordingly, the review team did not review this indicator.

5.0 SUMMARY

As noted in Sections 3 and 4 above, the review team found New Mexico’s performance to be satisfactory for five of the performance indicators reviewed; Technical Staffing and Training, Technical Quality of Inspections, Status of Materials Inspection Program, Technical Quality of Incident and Allegation Activities and Compatibility Requirements. The review team found New Mexico’s performance to be satisfactory but needs improvement for one indicator; Technical Quality of Licensing Actions. Accordingly, the review team recommends that the New Mexico Agreement State program be found adequate to protect public health and safety and compatible with NRC’s program. Based on the results of the current IMPEP review, the review team recommends that the next full review will be in approximately four years.

Below are the recommendations, as mentioned earlier in the report, for evaluation and implementation, as appropriate, by the Program.

RECOMMENDATIONS:

1. The review team recommends that the Program retrain its staff with regard to following its established procedure for termination of radioactive material licenses and follow-up actions by the inspectors regarding closeout surveys or additional documentation to support the termination request. (Section 3.4)
2. The review team recommends that when license renewals are performed the Program reviews the license in its entirety to ensure an accurate representation of the licensee's radioactive materials program is on file. (Section 3.4)

LIST OF APPENDICES AND ATTACHMENTS

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| Appendix A | IMPEP Review Team Members |
| Appendix B | New Mexico Organization Charts |
| Appendix C | Inspection Casework Reviews |
| Appendix D | License Casework Reviews |
| Appendix E | Incident Casework Reviews |
| Attachment | August 9, 2005, E-mail from Walter Medina New Mexico's Response to Draft IMPEP Report |

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

| Name | Area of Responsibility |
|--------------------------|--|
| John Zabko, STP | Team Leader Compatibility Requirements Technical Staffing and Training |
| Linda McLean, Region IV | Technical Quality of Inspections Inspection Accompaniments |
| Christi Maier, Region IV | Status of Materials Inspection Program Technical Quality of Incident and Allegation Activities |
| James Harris, Kansas | Technical Quality of Licensing Actions |

APPENDIX B

New Mexico
Environment Department

ORGANIZATION CHARTS

ML051530206
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APPENDIX C

INSPECTION CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT IS INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM.

File No.: 1

Licensee: Heart Hospital of New Mexico
Inspection Type: Routine, Unannounced
Inspection Date: 5/10/05

License No.: MI 363-11
Priority: 2
Inspector: MO

Comment:

a) Response to violations from previous inspection not in file.

File No.: 2

Licensee: Biotech Pharmacy, Inc.
Inspection Type: Follow-up, Announced
Inspection Date: 5/11/05

License No.: RP 301-27
Priority: 1
Inspector: GA

File No.: 3

Licensee: Kaseman Presbyterian Hospital
Inspection Type: Routine, Unannounced
Inspection Date: 5/12/05

License No.: MI 114-14
Priority: 2
Inspector: EV

Comment:

a) Response to violations from previous inspection not in file.

File No.: 4

Licensee: UniTech Services Group, Inc
Inspection Type: Routine, Announced
Inspection Date: 4/6/04

License No.: LA 110-21
Priority: 2
Inspector: WM

File No.: 5

Licensee: Basin Well Logging Wireline Services, Inc.
Inspection Type: Routine, Unannounced
Inspection Date: 4/7/03

License No.: WL 283-01
Priority: 2
Inspector: WM

File No.: 6

Licensee: Blue Jet, Inc.
Inspection Type: Routine, Unannounced
Inspection Date: 1/27/03

License No.: WL 034-13
Priority: 2
Inspector: WM

File No.: 7

Licensee: Eastern New Mexico University
Inspection Type: Routine, Unannounced
Inspection Date: 2/18/03

License No.: AN 357-01
Priority: 3
Inspector: SM

Comment:

a) Response to licensee's NOV from 2003 inspection sent out in 2005.

File No.: 8

Licensee: Lea Regional Medical Center
Inspection Type: Routine, Unannounced
Inspection Dates: 1/16/02, 4/20/04

License No.: 1/16/02
Priority: 2
Inspector: SM

File No.: 9

Licensee: Mountain View Regional Medical Center
Inspection Type: Routine, Unannounced
Inspection Dates: 5/14/03, 5/24-25/05

License No.: MI 386-06
Priority: 2
Inspectors: SM, MO

Comment:

a) Response to licensee's NOV from 2003 inspection sent out in 2005.

File No.: 10

Licensee: Longview Inspection
Inspection Type: Initial, Routine, Announced
Inspection Dates: 2/15/04, 1/27/05

License No.: IR 350-09
Priority: 1
Inspectors: WM, SM

File No.: 11

Licensee: Cardinal Health
Inspection Type: Initial, Routine, Unannounced
Inspection Dates: 11/21/03, 2/3/05

License No.: RP 396-00
Priority: 1
Inspectors: SM, WM, SF, MO, EV

File No.: 12

Licensee: Carlsbad Medical Center
Inspection Type: Routine, Unannounced
Inspection Dates: 1/12/04, 3/2/05

License No.: MI 083-25
Priority: 2
Inspectors: SM, MO

File No.: 13

Licensee: H & H X-Ray Services, Inc.
Inspection Type: Routine, Unannounced
Inspection Dates: 6/24/03, 6/8/04

License No.: IR 267-12
Priority: 1
Inspector: WM

File No.: 14

Licensee: Eastern New Mexico Medical Center
Inspection Type: Routine, Unannounced
Inspection Dates: 11/8/01, 4/5-6/04

License No.: MI 065-25
Priority: 2
Inspector: SM

File No.: 15

Licensee: University of New Mexico
Inspection Type: Routine, Announced
Inspection Dates: 10/16-18/02, 9/30-10/2/03, 10/18/04

License No.: BM 233-70
Priority: 1
Inspectors: SM, SF, WF

Comment:

a) File missing licensees response to NOV

File No.: 16
Licensee: Ethicon Endo-Surgery
Inspection Type: Routine, Unannounced
Inspection Date: 5/21/04

License No.: GI 316-03
Priority: 1
Inspector: SM, WF

Comment:

- a) File missing licensees response to NOV

INSPECTOR ACCOMPANIMENTS

The following inspector accompaniments were performed prior to the on-site IMPEP review:

File No.: 1
Licensee: Heart Hospital of New Mexico
Inspection Type: Routine, Unannounced
Inspection Date: 5/10/05

License No.: MI 363-11
Priority: 2
Inspector: MO

Comment:

- a) Response to violations from previous inspection not in file.

File No.: 2
Licensee: Biotech Pharmacy, Inc.
Inspection Type: Follow-up, Announced
Inspection Date: 5/11/05

License No.: RP 301-27
Priority: 1
Inspector: GA

File No.: 3
Licensee: Kaseman Presbyterian Hospital
Inspection Type: Routine, Unannounced
Inspection Date: 5/12/05

License No.: MI 114-14
Priority: 2
Inspector: EV

APPENDIX D

LICENSE CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT IS INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM.

File No.: 1

Licensee: New Mexico Inst. Of Mining and Tech.

Location: Socorro, NM

Amendment No.: 7

Date Issued: 9/23/04

License No.: AB373-07

License Type: Broadscope research

Type of Action: Amendment

License Reviewer: WF

File No.: 2

Licensee: Ktech Corp.

Location: Albuquerque, NM

Amendment No.: 0

Date Issued: 1/21/05

License No.: AN419-00

License Type: Analytical lab

Type of Action: New

License Reviewer: MR

File No.: 3

Licensee: Bernalillo County Public Works Dept.

Location: Albuquerque, NM

Amendment No.: 30

Date Issued: 3/19/05

License No.: DM029-30

License Type: DM Gauge

Type of Action: Amendment

License Reviewer: MR

File No.: 4

Licensee: AMEC Earth & Environmental

Location: Tempe, AZ

Amendment No.: 32

Date Issued: 1/10/05

License No.: DM201-32

License Type: DM Gauge

Type of Action: Renewal

License Reviewer: MR

File No.: 5

Licensee: Lydick Engineers & Surveyors

Location: Clovis, NM

Amendment No.: 10

Date Issued: 7/17/03

License No.: DM131-10

License Type: DM Gauge

Type of Action: Renewal

License Reviewer: MR

File No.: 6

Licensee: Constructors, Inc.

Location: Carlsbad, NM

Amendment No.: 0

Date Issued: 1/10/03

License No.: DM297-00

License Type: DM Gauge

Type of Action: New

License Reviewer: MR

Comment:

- a) No license application evaluation form was completed for this license action as required by the Program's procedure for issuance of radioactive material licenses.

File No.: 7

Licensee: MolyCorp, Inc.
Location: Questa, NM
Amendment No.: 17
Date Issued: 6/10/04

License No.: GA139-17
License Type: Fixed gauge
Type of Action: Renewal
License Reviewer: MR

File No.: 8

Licensee: Atomic Inspection Labs, Inc.
Location: Albuquerque, NM
Amendment No.: 20
Date Issued: 4/1/02

License No.: IR022-20
License Type: Industrial Radiography
Type of Action: Renewal
License Reviewer: MR

File No.: 9

Licensee: Summit Medical Corporation
Location: Farmington, NM
Amendment No.: 3
Date Issued: 2/25/03

License No.: MD365-03
License Type: Medical Private Practice
Type of Action: Amendment
License Reviewer: MR

File No.: 10

Licensee: Alta Vista Regional Hospital
Location: Las Vegas, NM
Amendment No.: 0
Date Issued: 11/2/04

License No.: MI415-00
License Type: Medical Institution
Type of Action: New
License Reviewer: MR

File No.: 11

Licensee: Weston Solutions, Inc.
Location: Albuquerque, NM
Amendment No.: 20
Date Issued: 9/23/03

License No.: RD245-20
License Type: Research and Development
Type of Action: Amendment
License Reviewer: MR

File No.: 12

Licensee: Black Warrior Wireline Corp.
Location: Hobbs, NM
Amendment No.: 10
Date Issued: 4/15/05

License No.: WL032-10
License Type: Well Logging
Type of Action: Amendment
License Reviewer: MR

Comment:

a) Training information for IR362-13 found in this file.

File No.: 13

Licensee: Biotech Pharmacy, Inc.
Location: Albuquerque, NM
Amendment No.: 28
Date Issued: 5/12/05

License No.: RP301-28
License Type: Radiopharmacy
Type of Action: Renewal
License Reviewer: MR

File No.: 14

Licensee: UNM Radiation Safety

Location: Albuquerque, NM

Amendment No.: 70

Date Issued: 6/5/04

License No.: BM233-70

License Type: Medical Broadscope

Type of Action: Renewal

License Reviewer: MR

Comment:

- a) The application for renewal referenced prior amendment BM233-69 but all the tie down information relating to the prior amendments had been removed. License condition 10 requires compliance with the Radiation Safety Manual revised May 1989. The Radiation Safety Manual revised July 1999 on file is not addressed.

File No.: 15

Licensee: Radiology Associates of Albuquerque

Location: Albuquerque, NM

Amendment No.: 10

Date Issued: 4/30/04

License No.: MD177-10

License Type: Medical Private Practice

Type of Action: Termination

License Reviewer: WF

Comment:

- a) Amendment states a closeout survey will be performed. No closeout survey was found. Discussion with staff indicates the communication with inspectors for the need to perform closeout surveys or provide documentation to justify or support the termination is frequently overlooked. Comment in body of this report.

APPENDIX E

INCIDENT CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT IS INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM.

File No.: 1

Licensee: Baker Hughes Oilfield Operations, Inc.

Site of Incident: Hobbs, NM

Date of Incident: 9/22/01

Investigation Date: 4/26/02

License No.: WL 241

Incident Log No.: NM-xx-xx

Type of Incident: Abandonment of Well Logging Tool

Type of Investigation: Telephone

Comment:

a) Incident Log number was not recorded.

File No.: 2

Licensee: Western Technologies

Site of Incident: Cuba, NM

Date of Incident: 9/6/01

Investigation Date: 9/6-14/01

License No.: DM 244

Incident Log No.: NM-xx-xx

Type of Incident: Loss of Radioactive Material

Type of Investigation: On-site

Comments:

a) Event Report was not reviewed/signed by Program Manager.

b) Incident Log number was not recorded.

File No.: 3

Licensee: P&M Construction

Site of Incident: Ponderosa, NM

Date of Incident: 9/01 - 10/25/02

Investigation Date: 12/13/02

License No.: DM 159

Incident Log No.: NM-02-05

Type of Incident: Loss of Radioactive Material

Type of Investigation: On-site

File No.: 4

Licensee: H & G Inspection Company, Inc.

Site of Incident: Bloomfield, NM

Date of Incident: 7/8/02

Investigation Date: 7/26/02

License No.: IR 268

Incident Log No.: NM-02-03

Type of Incident: Overexposure

Type of Investigation: Telephone

File No.: 5

Licensee: Schlumberger Technology

Site of Incident: Eddy County, NM

Date of Incident: 4/26/02

Investigation Date: 4/26/02

License No.: WL 197

Incident Log No.: NM-02-01

Type of Incident: Abandonment of Well Logging Tool

Type of Investigation: Telephone

File No.: 6

Licensee: AMEC Earth & Environmental

Site of Incident: Rio Rancho, NM

Date of Incident: 5/5/05

Investigation Date: 5/5/05

License No.: DM 201

Incident Log No.: NM-05-03

Type of Incident: Transportation

Type of Investigation: Telephone

File No.: 7

Licensee: United Parcel Service
Site of Incident: Albuquerque, NM
Date of Incident: 12/23/04
Investigation Date: 12/23/04

License No.: N/A (non-licensee)
Incident Log No.: NM-xx-xx
Type of Incident: Found RAM
Type of Investigation: On-site

Comment:

- a) Incident Log number was not recorded.

File No.: 8

Licensee: Riverside Technologies
Site of Incident: Santa Fe, NM
Date of Incident: Between 10/1/04 and 10/4/04
Investigation Date: 10/04-12/04

License No.: DM 345
Incident Log No.: NM-xx-xx
Type of Incident: Theft of RAM
Type of Investigation: Telephone

Comments:

- a) Event Report was not reviewed/signed by Program Manager.
- b) Incident Log number was not recorded.

File No.: 9

Licensee: H & G Inspection Company, Inc.
Site of Incident: Bloomfield, NM
Date of Incident: 2/7/05
Investigation Date: 2/7-23/05

License No.: IR 268
Incident Log No.: NM-xx-xx
Type of Incident: Overexposure
Type of Investigation: Telephone

Comment:

- a) Incident Log number was not recorded.

Attachment
August 9, 2005, E-mail from Walter Medina
New Mexico's Response to Draft IMPEP Report

ADAMS: ML052310086

**Agenda for Management Review Board Meeting
August 25, 2005, 1:00 p.m.- 3:00 p.m., O-3B4**

1. Announcement of public meeting, request for members of the public to indicate they are participating and their affiliation.
2. MRB Chair convenes meeting. Introduction of MRB members, review team members, State representatives, and other representatives participating through telephone bridge or video conferencing. (Organization of Agreement States (OAS) Liaison is Edgar Bailey from California.)
3. Consideration of the New Mexico IMPEP Report.
 - A. Presentation of Findings Regarding New Mexico Program and Discussion.
 - Technical Staffing and Training
 - Status of Materials Inspection Program
 - Technical Quality of Inspections
 - Technical Quality of Licensing Actions
 - Technical Quality of Incident and Allegation Activities
 - Compatibility Requirements
 - B. IMPEP Team Recommendations.
 - Adequacy and Compatibility Rating
 - Recommendation for Next IMPEP Review
 - C. MRB Consultation/Comments on Issuance of Report.
4. Request for comments from New Mexico Management, OAS Liaison, and State IMPEP Team Member. (State IMPEP team member is Jim Harris from Kansas.)
5. Adjournment

| | | |
|-----------|-----------------------|---------------------|
| Invitees: | Martin Virgilio, OEDO | Dennis Rathbun, STP |
| | Paul Lohaus, STP | Linda McLean, RIV |
| | Karen Cyr, OGC | John Zabko, STP |
| | Jack Strosnider, NMSS | Christi Maier, RIV |
| | Jim Harris, KS | |
| | Osiris Siurano, STP | |
| | Cardelia Maupin, STP | |
| | Edgar Bailey, CA | |