

September 8, 2005

MEMORANDUM TO: Management Review Board Members:

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

FROM: Osiris Siurano, Health Physicist */RA/*
Office of State and Tribal Programs

SUBJECT: MINUTES: AUGUST 11, 2005, MAY 24-26 CALIFORNIA
SPECIAL REVIEW MRB MEETING

Attached are the minutes of the Management Review Board (MRB) meeting held on August 11, 2005. If you have comments or questions, please contact me at 415-2307.

Attachment:
As stated

cc: Steve Collins, OAS Liaison, IL
Edgar Bailey, CA

Distribution:

DIR RF
DRathbun, STP
LMcLean, RIV
DWhite, RI
JZabko, STP
AMcCraw, STP
HFelsher, EDO
RStruckmeyer, NMSS/IMNS

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MINUTES: MANAGEMENT REVIEW BOARD MEETING OF AUGUST 11, 2005

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

Martin J. Virgilio, DEDMRS, MRB Chair
Karen D. Cyr, MRB Member, OGC
Dennis Rathbun, STP
Richard Struckmeyer, NMSS
Osiris Siurano-Perez, STP

Paul H. Lohaus, MRB Member, STP
Margaret Federline, MRB Member, NMSS
John Zabko, STP
Harry Felsher, EDO

By videoconference:

Linda McLean, Team Leader, RIV
Duncan White, RI
L. Barrett, CA
K. Reilly, CA
V. Anderson, CA
G. Butner, CA
G. Perez, CA

By teleconference:

Steve Collins, IL, OAS Liaison

1. **Convention.** Mr. John Zabko convened the meeting at 1:05 pm. He noted that this MRB meeting was open to the public. However, no members of the public attended this meeting. He then transferred the lead to Mr. Martin Virgilio, Chair of the Management Review Board (MRB). Introductions of the attendees were conducted.
2. **California Special IMPEP Review.** Mr. Zabko summarized the proceedings due to the special nature of this MRB. He made reference to the June 30, 2005, letter to California transmitting the official results of the May 24-26 special review. He noted that some of the information included in the proposed final report regarding the special review of the California program had changed based on new information provided by California staff during the August 2, 2005, heightened oversight call. In addition, Mr. Zabko indicated that the California management and staff participating in the MRB would have time to present current information to update the MRB on California's progress to complete actions contained in the Program Improvement Plan (Plan). Ms. Linda McLean, team leader, proceeded to discuss the team's findings after providing background information on the MRB's decision to place California under heightened oversight following the 2004 IMPEP review.

Ms. McLean reported that on May 24-26, 2005, a special IMPEP review to assess California's implementation of their Program Improvement Plan was conducted. On June 30, 2005 a letter summarizing the results of the review was mailed to Mr. Larry Barrett, DVM, State of California Division of Food, Drug and Radiation Safety.

The review team concluded that the Plan was not being utilized as an effective management tool, and that the responsibility for evaluating the effectiveness of the

Plan appeared to be at the staff level, without direct management oversight. The review team also reviewed the Radiologic Health Branch's (Branch) efforts to carry out corrective actions, as documented in their Plan, in response to recommendations resulting from the IMPEP conducted April 26-30, 2004. The current status of each of the 2004 IMPEP review recommendations was discussed.

Recommendation #1. The review team recommended that the State ensure that adequate resources, both funding and staffing, be devoted to the radiation control program.

Mr. Duncan White provided a summary of the status of this recommendation. At the time of this review, the Branch had 11 vacant positions and a new fees schedule was expected to be approved. The review team concluded that even though the staffing level for the program appeared to be sufficient to carry out the program's obligations under the Agreement with the NRC, it appears that the staff was not being adequately used, and will not be able to absorb any future increased demands on the program. The State provided updated information in regard to this recommendation. A new fee schedule has been approved and the State has started to collect fees. The fee schedule was approved as an emergency rule and the State indicated that they are taking actions necessary to keep it in effect until the permanent rule is enabled. In addition, eight new positions have been approved and there are ongoing efforts to fill these positions within the next weeks. The MRB was concerned about the ability of the State to retain the current staff and how the shifting of staff could adversely impact the program. The State noted that the salary structure was to be revised, that it was confident that no additional staff turnover is expected, and, as a result of filling positions, shifting of staff will no longer be necessary. The MRB had no additional questions.

Recommendation #2. The 2004 IMPEP review team recommended that the Branch enhance its ability to account for the whereabouts and security of licensed materials known to have existed under a license.

Ms. McLean presented a summary of the status of this recommendation. She reported that a committee comprised of licensing and inspection staff meets monthly to review delinquent/unaccounted for licensees to determine what action should be taken. At the time of the review there were eight licensees identified for additional action. Division management committed to providing investigative assistance from another Branch under their program to assist in finding these licensees. The State provided the following updated information. At the time of the MRB, six of the eight licensees unaccounted for have been found and adequate action has been taken. The MRB asked for information regarding the type of licensees that could not be accounted for. The Branch responded that they were gauge licensees, and that one had been located that day, and that they would inspect this licensee as soon as possible. The State continues its efforts to find the remaining unaccounted for licensee. The MRB had no additional questions.

Recommendation #3. The 2004 IMPEP review team recommended that the Branch implement procedures to ensure inspections findings are issued to licensees within 30 days of completion of routine inspections.

Mr. White presented the following information on the status of this recommendation. The Branch developed a database to track the timeliness of the correspondence sent to licensees. NRC staff reviewed the database and found that since the 2004 IMPEP review, 375 inspections have been completed with 19 inspection findings issued beyond 30 days. The team concluded that, overall, this represents good performance. However, the NRC staff noted that the database only documents the timeliness of these actions and does not provide an effective management tool for the Branch's Supervising Health Physicist to track the progress of ongoing inspections. The review team noted that of the 19 late inspection findings transmitted by the regional offices, in eight cases, the findings were transmitted at least 57 days beyond the 30-day goal and for the remaining 11 overdue inspection findings, the average time overdue was eight days. The State informed that since the special IMPEP review, 187 additional inspections have been performed with only 3 inspection findings reports sent out after 30 days. The MRB commended the State for their progress in this area.

Recommendation #4. The 2004 IMPEP review team recommended that the incident and allegation history of a licensee be reviewed during the evaluation of licensing actions.

Ms. McLean presented the status of this recommendation. The Branch has modified their administrative process to add a comment on the master licensing list to indicate pending actions. This will allow the license reviewer to contact the Branch inspector or supervisor to determine if the license reviewer will need to take specific action during the review and amendment of the license. The master licensing list, which reflects incoming licensing actions by unit and type, includes a comment line that reflects a brief summary of the action and any previous assignments of the action entered by the Special Projects and Support Unit. The list is used by the Senior Health Physicist to assign actions to reviewers. The incoming license number is compared to a database to identify any open incidents or allegations. This modification to the master licensing list was first accomplished during the NRC staff's on-site visit. The Branch planned to complete the procedure and evaluate feedback from licensing staff in June 2005. The State noted that, as of the date of this MRB, the system is in place and properly working. The MRB had no further questions.

Recommendation #5. The 2004 IMPEP review team recommended that the Branch, in coordination with INEEL, complete and close all reportable incidents in NMED.

Ms. McLean also presented the status of this recommendation. The Branch has closed and/or reported to Idaho National Engineering and Environmental Laboratory (INEEL) Many of the reportable events that were not reported to INNEL. At the time of the special IMPEP review only eight events remained opened. The State reported that progress has been made in this area and the it continues efforts to close remaining events. The MRB had no additional questions.

Recommendation #6. The 2004 IMPEP review team recommended that the Branch submit reportable events to NMED within one month of their occurrence in accordance with the "Handbook of Nuclear Events Reporting in the Agreement States." (Open recommendation from the 1999 IMPEP report)

Ms. McLean reported that the team did not review this recommendation. However the State noted that progress in this area has been made and only three events have not been entered within the required time frame since 2004. The MRB did not have any questions.

Recommendation #7. The 2004 IMPEP review team recommended that the Branch establish and implement a system to track incident and allegation investigations to ensure timeliness, proper documentation, appropriate follow up and closure.

Ms. McLean and Mr. White presented the summary of the status of this recommendation. They reported that, as of May 4, 2005, there were 195 total open investigations from 2004-2005, and 118 (60 percent) have been open for greater than 90 days. (The Los Angeles County office had 72 of the 195 opened events.) The Branch established a procedure and a database to track events. The procedure requires that State Form 5010 be completed upon first notice of an event. However, after the Form 5010 is opened it appears that there is little to no follow-up to close the event in the database. The team is confident that the Branch responds to events promptly and conducts thorough investigations of events; however, many events remain open in the database including some events that date back to 2004 (when the database was first established). The team concluded that the administrative closing of these events needs to be addressed by the Branch. The Branch responded that they have developed a procedure to ensure that the database is reviewed and the 5010's are administratively closed out properly. The MRB had no questions.

Recommendation #8. The 2004 IMPEP review team recommended that the Branch develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Ms. McLean reported that the Branch had made some progress in addressing NRC regulations required for compatibility; however, no rulemaking packages have been approved since the 2004 IMPEP review. At the time of the review, the review team identified 20 NRC amendments that were overdue and need to be addressed and five other NRC amendments that will need to be addressed in the future. A review of the State's administrative rulemaking process found that the process takes, at a minimum, one year (and often longer) after preparation of a draft rule to the final filing with the Secretary of State, after which the rules become effective in 30 days. For amendments that only affect a small number of licensees, the Branch is utilizing or will utilize license conditions to bring the affected licenses into compliance. The Branch has several rulemaking packages in various stages of California's regulatory process. Most packages are still in the early stages of the approval process. The review team noted that although the Branch has made progress toward resolving this recommendation, based on the IMPEP indicator rating criteria for Compatibility Requirements, the Branch would still be likely to be found "unsatisfactory" if an actual IMPEP review is conducted. The review team estimates that it could take the Branch at least 1-2 years from the date of this special review to become compatible with NRC's program. The MRB had no additional questions.

Recommendation # 9. The 2004 IMPEP review team recommended that the Branch formally establish and implement (1) a process to notify the Sealed Source and Device (SS&D) evaluation program of all defects and incidents involving California administered sheets; and (2) a procedure for the SS&D evaluation program to investigate report of defects and incidents for root cause and generic implications for possible subsequent reevaluation of SS&D sheets.

Mr. White reported that the Branch modified their 5010 form to allow the Branch staff to categorize a particular incident as an equipment problem or defect. Individual incoming licensing actions on the licensing master list (which include amendments to SS&D registry sheets) are now noted with a particular 5010 reference number. This alerts the SS&D reviewer that an incident involving this device is still pending. The Branch discussed with the review team the status of guidance under development for SS&D reviewers to investigate reports of defects and incidents for root cause and generic implications. A draft procedure was prepared by SS&D staff which has been reviewed by the SS&D supervising Health Physicist. Once revised and finalized, the guidance was to be implemented by the State by July 1, 2005.

Recommendation #10. The 2004 IMPEP review team recommended that the State re-evaluate the Nova R&D, Inc. Model Cindy neutron device with special attention to the potential exposure received by the generally licensed user. If it is determined that the exposure rate exceeds that which is allowed for persons covered under a general license, the device should be reclassified for distribution to persons covered under a specific license and the SS&D evaluation certificate should be amended to reflect any required changes. (Open recommendation from the 1996 IMPEP report)

Ms. McLean reported that this registry sheet (CA-0380-D-101-G) has been modified to allow only distribution to specific licensees. The team reviewed the September 13, 2004 letter to Nova R&D from the Branch which reclassified the device to require distribution to only persons covered under a specific license. The SS&D evaluation certificate was also amended to reflect the required changes. The team concluded that this recommendation has been addressed. The MRB had no additional questions.

3. **Status of Program Improvement Plan.** Mr. Zabko reported that the State submitted a revised Improvement Plan. He noted that NRC staff's evaluation of the revised plan concluded that, overall, that the Plan is an improvement from previous versions and meets the requirements of the heightened oversight process. He noted that the revised plan reflects progress in all the areas the State needs to address. The MRB had no questions.
4. **Schedule for next Follow-up IMPEP Review.** Mr. Zabko presented a proposal to schedule the California follow-up IMPEP Review for March of 2006. He noted that California submitted a modified plan on July 14, 2005, in response to the May 24-26 special IMPEP review. Mr. Zabko noted that this revised Plan provides completion dates for some of the corrective actions in December 2005. He stated that, in order to give California management time to complete actions presented in the revised Plan, and to allow the time for the actions to take effect, NRC staff recommended rescheduling the

follow-up IMPEP review for March 2006. The MRB agreed and approved the proposal with no further questions.

5. **Status of Current and Upcoming Reviews.** No information on the status of current and upcoming reviews was provided during this meeting.
6. **Precedents/Lessons Learned.** No precedents that will be applied to the IMPEP process in the future were established by the MRB during this review.
7. **Good Practices.** No good practices were identified during this review.
8. **Adjournment.** The meeting was adjourned at approximately 2:22 p.m.