December 4, 2006

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

Karen D. Cyr, General Counsel

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Marc L. Dapas, Deputy Administrator
Region I

FROM: Aaron T. McCraw, IMPEP Project Manager ***/RA/***
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

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

This memorandum transmits to the Management Review Board (MRB) a proposed final report (Enclosure 1) documenting the IMPEP review of the Nebraska Agreement State Program. The review of the Nebraska Program was conducted by an interoffice team during the period of September 18-21, 2006. The review team issued a draft report to Nebraska on October 24, 2006, for factual comment. Nebraska responded to the findings and conclusions of the review by e-mail dated November 22, 2006, from Julia Schmitt, Program Manager, Radiation Control Program. Based on the e-mail, Nebraska had 11 comments on the draft report, mostly minor. The review team examined the comments and adopted them, where appropriate in the report. One comment not adopted concerned Nebraska's proposal for a "Best Practices" item.

The review team is recommending that Nebraska's performance be found "satisfactory" for all performance indicators reviewed. The review team made no recommendations in regard to program performance by the State. Accordingly, the review team is recommending that the Nebraska Agreement State Program be found adequate to protect public health and safety and compatible with NRC's program.

The Management Review Board meeting to consider the Nebraska report is scheduled for **Thursday, December 14, 2006, from 3:00 p.m. - 5:00 p.m., in Two White Flint North, Room T-8A1**. In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for the meeting is enclosed (Enclosure 2).

If you have any questions prior to the meeting, please contact me at 301-415-1277.

Enclosures:
As stated

cc: Julia A. Schmitt, Manager
Nebraska Radiation Control Program

Robert E. Leopold, Director
Nebraska Public Health Assurance Division
State Liaison Officer

Richard A. Ratliff, Texas
Organization of Agreement
States Liaison to the MRB

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF NEBRASKA AGREEMENT STATE PROGRAM

SEPTEMBER 18-21, 2006

PROPOSED FINAL REPORT

U.S. Nuclear Regulatory Commission

ENCLOSURE 1

1.0 INTRODUCTION

This report presents the results of the review of the Nebraska Agreement State program. The review was conducted during the period of September 18-21, 2006, by a review team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the Agreement State of North Carolina. 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 Final General Statement of Policy," published in the Federal Register on October 16, 1997, and the February 26, 2004, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the review, which covered the period of September 20, 2002 to September 21, 2006, were discussed with Nebraska management on the last day of the review.

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

The Nebraska Agreement State program is administered by the Radiation Control Program (the Program) in the Department of Health and Human Services System (the Department). The Program Manager reports to the Section Administrator for Consumer Health Services, who reports to the Division Director for Public Health Assurance. The Division Director for Public Health Assurance reports to the Director of Regulation and Licensure, who is a member of the Policy Cabinet for the Health and Human Services System that reports to the Governor. Organization charts for the Department and the Program are included in Appendix B. At the time of the review, the Nebraska Agreement State program regulated 143 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 Nebraska.

In preparation for the review, a questionnaire addressing the common and non-common performance indicators was sent to the Program on July 19, 2006. The Program provided a response to the questionnaire on August 31, 2006. A copy of the questionnaire response may be found in the NRC's Agencywide Document Access and Management System (ADAMS) using the Accession Number ML062920042.

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 Nebraska statutes and regulations; (3) analysis of quantitative information from the Program's licensing and inspection database; (4) technical evaluation of selected licensing and inspection actions; (5) field accompaniments of two Program inspectors; and (6) interviews with staff and management to answer questions or clarify issues. The review team evaluated the information gathered against the established criteria for each common and applicable non-common performance indicator and made a preliminary assessment of the Nebraska Agreement State program's performance.

Section 2 of this report discusses the State's actions in response to recommendations made following the previous IMPEP 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.

2.0 STATUS OF ITEMS IDENTIFIED IN PREVIOUS REVIEWS

The previous IMPEP review, which concluded on September 20, 2002, resulted in no recommendations in regard to performance by the State. One recommendation was made by the review team to NRC staff. The review team's evaluation of the current status of the recommendation is as follows:

1. The review team recommends that NRC's Office of Nuclear Material Safety and Safeguards review the contractor's procedure for inputting NMED data and review the database information for accuracy and completeness. (Section 3.5 of the 2002 IMPEP report)

   Current Status: The Nuclear Material Events Database (NMED) procedure was revised so that the contractor will acknowledge receipt of the information and provide feedback to Agreement States. It is recommended that this item 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 include: (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 relative to this indicator, interviewed Program management and staff, reviewed job descriptions and training records, and considered any possible workload backlogs.

The review team determined that Program staffing was stable, with no staff members leaving or joining the program, over the review period. The radioactive materials program has four technical positions, including the Program Manager. Currently, the Program has no vacant positions. For clarification on the organizational chart provided by the Program, which can be found in Appendix B, the vacant positions that are shown are not funded, are not planned to be filled by the program at this time, and are not intended to be utilized for Atomic Energy Act (AEA) materials efforts.

In addition to the four materials staff members, the Program has two x-ray inspectors, one health specialist, and two clerical positions. As noted above, the Program Manager reports to the Section Administrator for Consumer Health Services. The Section Administrator spends approximately 10 percent of her time in radioactive materials licensing and inspection activities.

The review team noted that the Program experienced stable funding during the review period. Licensee fees support the Program.

Training and qualification requirements for the radioactive materials staff are established in a procedure dated February 2, 1999. The procedure sets forth essentially the same training and qualification recommendations developed by the NRC's Inspection Manual Chapter (MC 1246). Inspector requirements include NRC, or equivalent, core training courses when available. Inspectors are also required to be accompanied by a senior staff member on an inspection prior to authorizing the inspector to perform an independent inspection, and periodically thereafter.

All of the technical staff have a Bachelor's degree coupled with at least six years of experience in the Program. All technical staff members have taken the NRC courses deemed appropriate for their tasks. Three staff members, including the Program Manager, have attended the NRC Security Systems and Principles Course, and one other is scheduled to attend the course in the fall of 2006. The training records demonstrated that Program management is committed to training for the staff. The review team concluded that the Program has a well balanced staff, and a sufficient number of trained personnel to carry out regulatory duties.

The Nebraska Board of Health reviews proposed rules and regulations for the use of radioactive material as part of their duties. Under the State's law, members are required to declare in writing any matter requiring action or decision that may cause a potential conflict. A member may abstain from activities in which the potential conflict exists.

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

3.2 Status of Materials Inspection Program

The review team focused on five factors while reviewing this indicator: inspection frequency; overdue inspections of Priority 1, 2, and 3 licensees; initial inspections of new licenses, timely dispatch of inspection findings to the licensees, and the performance of reciprocity inspections. The review team's evaluation is based on the Program's response to the questionnaire relative to this indicator, data gathered from the Program's database, examination of completed inspection casework, and interviews with Program management and staff.

The review team verified that the Program's inspection frequencies are equivalent to those listed in MC 2800 with the following exceptions: nuclear pharmacy; broad scope academic; medical institution; medical - private practice; mobile nuclear medicine; teletherapy; manufacturer and distributor; and research and development, all of which are conducted more frequently.

The Program maintains a database which is used to identify relevant inspection information, including inspection due dates for licensees. The database contains sufficient information for proper management of the inspection program. The review team determined that, during the review period, the Program conducted 124 Priority 1, 2, and 3 inspections of which only one was overdue, that by 26 days. Nineteen initial inspections were conducted during the review period. All were performed within the first year.

The review team evaluated the Program's timeliness in providing inspection findings to licensees. The review team determined that the average time for the issuance of inspection

findings was approximately 30 days. The Program uses Form 591 at the end of some inspections.

During the review period, the Program granted 133 reciprocity permits, 49 of which were candidate licensees based upon the criteria in MC 1220. The review team determined that the Program inspected 19 percent of the candidate licensees in 2003, 17 percent in 2004, and 28 percent in 2005. The Program had not conducted any reciprocity inspections to date in 2006. This issue was discussed with management and staff during the review. Although the program did not meet the criteria in MC1220 of inspecting 20 percent of candidate licensees operating under reciprocity for each year, the program manager explained that the shortages were due to management decisions based on distance of travel and weather conditions.

The review team determined that with respect to Commission Staff Requirements Memorandum (SRM) for COMSECY-05-0028, on increased controls, the Program identified a total of 12 increased controls inspections to be conducted within the three-year period. Three of the 12 inspections had been conducted by the time of the review; however, the inspection reports were pending completion and were unavailable for evaluation during the review. The review team evaluated the Program's prioritization methodology and found it acceptable.

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

3.3 Technical Quality of Inspections

The review team evaluated the inspection reports and enforcement documentation and interviewed inspectors for 18 radioactive materials inspections conducted during the review period. The casework reviewed included work performed by all of the Program's radioactive materials inspectors and covered a variety of license types including: academic broad scope, medical (broad scope, diagnostic, and therapy), high dose-rate remote afterloader, mobile nuclear medicine, gamma stereotactic radiosurgery, and industrial radiography. Appendix C lists the inspection casework reviewed, with case-specific comments, as well as the results of the inspector accompaniments.

Based on the evaluation of the casework, the review team concluded that the routine inspections covered all aspects of the licensees' radiation programs. The review team found that inspection reports were generally very thorough, complete, consistent, and of good quality, with sufficient documentation to ensure that a licensee's performance with respect to health and safety was acceptable. The documentation supported violations, and recommendations made to the licensee. Team inspections were performed for larger and more complex licensees and for training purposes. The review team found that in some cases the inspectors did not provide enough detailed documentation of their observations of licensed operations or interviews of personnel. This issue was discussed with management and staff during the review.

The inspection findings were appropriate and prompt regulatory actions were taken, as necessary. The licensee is required to respond to the preliminary findings within 30 days. All inspection findings are clearly stated and documented in the report, which is peer reviewed. The Program has the ability to impose civil monetary penalties. The amount of the penalty is based on the severity of the violation(s). In addition, the Program may impose an increased

inspection frequency and may also charge the licensee for each additional inspection. The Program has entered into three-year Agreed Settlements with some licensees in which the Program waives payment of one third of the civil money penalty each year the licensee remains in substantial compliance, contingent upon the outcomes of the follow-up inspections. If the licensee remains in substantial compliance in the next two years, the remaining civil monetary penalty is not collected.

Supervisory accompaniments were conducted annually for all inspectors with two exceptions: one inspector was not accompanied in 2003, and one in 2004. Accompaniments are conducted by the Program Manager and by senior inspectors. Accompaniment observations are discussed with each inspector during the accompaniment, and comments are documented on the inspection field notes.

The Program maintains a sufficient number and variety of survey instruments to support their radiation protection efforts. Instruments are calibrated by the manufacturer. Appropriate, calibrated survey instruments such as Geiger-Mueller (GM) meters, scintillation detectors, ion chambers, and micro-R-meters were observed.

Two Program inspectors were accompanied during inspections by a review team member during the week of September 12, 2006. The inspector accompaniments included two medical institutions. These accompaniments and associated comments are identified in Appendix C. During the accompaniments, each inspector demonstrated appropriate performance-based inspection techniques and knowledge of the regulations. The inspectors were prepared and thorough in their audits of the licensees radiation safety programs, and each inspector utilized good health physics practices. The inspections were adequate to assess radiological health and safety at the licensed facilities. Interviews with licensee personnel were performed in an effective manner; however, the review team member noted that the inspectors interviewed only the technical staff. Although not part of these inspections, the inspectors showed familiarity with the increased controls requirements.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska'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 license reviewers for 16 specific licenses. Licensing actions were reviewed for completeness, consistency, proper radioisotopes and quantities, qualifications of authorized users, adequate facilities and equipment, adherence to good health physics practices, financial assurance, operating and emergency procedures, appropriateness of the license conditions, and overall technical quality. The casework was also reviewed for timeliness, use of appropriate deficiency letters and cover letters, reference to appropriate regulations, product certifications, supporting documentation, consideration of enforcement history, pre-licensing visits, supervisory review as indicated, and proper signatures. The casework was 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. Licensing actions selected for evaluation

included one new license, four renewals, eight amendments, and three terminations. The sampling included the following types of licenses: broad scope (academic and medical); nuclear medicine; brachytherapy; nuclear pharmacy; mobile nuclear medicine; industrial radiography; self-shielded irradiator; research and development (non-human use); service provider; manufacturer; industrial gauge; and an irradiator, unshielded during irradiation. A listing of the licensing casework evaluated can be found in Appendix D. Although only the most recent amendment number is listed, all licensing actions dating back to the last IMPEP were reviewed for each of the files.

Licensing actions are assigned to a license reviewer and given a priority ranking based on the type of action. Once the reviewer completes the action, a second review is performed by one of the other license reviewers. Each licensing action is documented on a "License Action Review Record," which includes detailed preparer and reviewer notes, a description of the action, correspondence included in the licensing action, and administrative information. The Program generates licenses utilizing an internally developed database with standardized conditions and format. All licenses are signed by either the Program Manager or the Section Administrator. The State issues licenses for a five-year period under a timely renewal system, utilizes internally developed licensing guides (supplemented by NRC licensing guides) and policies as appropriate, uses standard licensing conditions, and issues a complete license for each licensing action.

A review of termination actions taken over the review period showed that nearly all of the terminations were for licensees possessing only sealed sources or for uses of radiopharmaceuticals with short half lives. The review team found that terminated licensing actions were well documented, showing appropriate transfer records or appropriate disposal methods and records, confirmatory surveys, and survey records. In discussions with the Program Manager, the review team noted that during the review period there were no major decommissioning efforts underway with regard to Agreement material in Nebraska.

As of September 25, 2006, there were 24 open licensing cases pending review. Of these, five were new and five were renewal applications. No cases have been pending for longer than the turn around time associated with their prioritization system. The Program has developed a prioritization methodology checklist to identify those applications that need to be processed first based on a high, medium, or low risk significance. Each licensing action goes through a peer review and concurrence process. Renewal applications are given a low priority if the application does not indicate any changes to the existing program and if there have been no major enforcement actions. The review team determined that this prioritization process is adequate.

The review team found that written licensing procedures have not been formally updated since the last review. However, programmatic changes in licensing procedures have been handled in staff meetings routinely held once or twice a month.

The review team examined the list of licensees that the Program had determined met the criteria for the increased controls per COMSECY-05-0028. The review team determined that the Program had correctly identified the licensees that require increased controls based on these criteria, and will continue to issue increased controls to any additional licensees, as appropriate. Each licensee was issued a license amendment requiring increased controls in accordance with the time lines established by the Commission in the SRM for COMSECY-05-0028. Licensees not subject to increased controls, such as portable gauge licensees with open

possession limits, are issued a license amendment capping their possession limits for isotopes of concern listed in COMSECY-05-0028.

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

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 Section's response to the questionnaire relative to this indicator, evaluated selected incidents reported for Nebraska in the NMED against those contained in the State database and incident files, and evaluated the casework and supporting documentation for four radioactive materials incidents. A listing of the incident casework examined can be found in Appendix E. The review team also evaluated the Program's response to allegations involving radioactive materials, including allegations referred to the State by the NRC. Incident and allegation policies, file documentation, the Program's incident and allegation tracking system, NMED, and notification of incidents to the NRC Headquarters Operations Center were discussed with the Program Manager and staff.

When notified of an incident, the Program Manager assigns a member of the inspection staff to investigate the incident and determine if the event requires a call to the NRC Headquarters Operations Center. One staff member is responsible for recording the event in the Nebraska incident database and the licensee file. Another staff member leads any required follow-up activities. The Program responded to a total of 20 radioactive material incidents during the review period. Four of those incidents were reportable under NRC criteria; however, all 20 were submitted to the NRC contractor responsible for maintaining NMED. One designated staff member manages the entries to NMED. The review team evaluated the four reportable incidents. The incidents included: loss of radioactive material, equipment failure, a stolen gauge and damage to equipment.

The review team noted that close coordination with the NRC was maintained during incident follow up, and the Program's response to incidents was commensurate with the health and safety significance of the event. Inspectors were dispatched for investigations when appropriate and enforcement action was taken when needed. Incident reports were thorough, well-documented and timely. All incident reports were reviewed by the appropriate level of management.

During the review period, the Program received one allegation involving Agreement material and another involving Agreement State regulated material. The review team evaluated the casework for both allegations, one of which was referred to the State by the NRC. The review team's evaluation indicated that prompt and appropriate action was taken in response to the concerns raised. Allegers requesting anonymity were informed that every effort would be made to protect his/her identity, but could not be guaranteed. Each of the allegations reviewed were appropriately closed, and the allegers were informed of the results.

Based on the IMPEP evaluation criteria, the review team recommends that Nebraska'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. Nebraska's Agreement does not authorize regulation of uranium recovery activities, so only the first three non-common performance indicators were applicable to this review.

4.1 Compatibility Requirement

4.1.1 Legislation

Nebraska became an Agreement State on October 1, 1966. The currently effective statutory authority for the Department is contained in Nebraska Radiation Control Act 71-3501 to 71-3520. The Department, Regulation and Licensure, is designated as the State's radiation control agency.

The Program provided the review team copies of two pieces of legislation that were passed during the review period. One defined the term "deliberate misconduct," the other authorized the Department to dispose of confiscated sources. The review team looked at the new statutory provisions and found the first essentially identical with equivalent NRC provisions. The review team had no comments on the second piece of legislation.

4.1.2 Program Elements Required for Compatibility

The Nebraska Regulations for Control of Radiation, Title 180, Nebraska Administrative Code, apply to all ionizing radiation. Nebraska requires a license for possession and use of all radioactive material, including non-AEA materials. Nebraska also requires registration of all equipment designed to produce x-rays or other ionizing radiation.

The review team examined the State's administrative rulemaking process and found that the process takes approximately 12 months from the development stage to the final filing with the Secretary of State, after which the rules become effective in five days. The process includes the development stage, public hearing stage, approval stage, and the filing stage. All rules and regulations for adoption must be adopted in accordance with the Administrative Procedures Act, Section 84-901- 84-920 et seq. of the Nebraska Revised Statutes, signed by the Governor, then filed with the Secretary of State. The public, the NRC, other agencies, and all potentially impacted licensees and registrants are offered an opportunity to comment during the process. Comments are considered and incorporated as appropriate before the regulations are finalized. The State cannot adopt other agency regulations by reference; however, the State can adopt other requirements such as Title 10 of the Code of Federal Regulations by attaching the specific regulation, with the effective date, to the State's proposed regulations during the adoption process. The State has the authority to issue legally binding requirements (e.g., license conditions) in lieu of regulations until compatible regulations become effective.

The review team evaluated the Program's response to the questionnaire relative to this indicator, reviewed the status of regulations required to be adopted by the State under the Commission's adequacy and compatibility policy and verified the adoption of regulations with data obtained from the Office of State and Tribal Program's (STP) State Regulation Status Data

Sheet. Since the previous IMPEP review, the Department adopted six amendments in one rule package that became effective in April 2003.

The 2002 review team found that one amendment, "Deliberate Misconduct by Unlicensed Persons, (63 FR 1890; 63 FR 13773)," was not adopted within the three-year time frame due to the need for a legislative change. The Department adopted the rule in 2003 after the State Radiation Control Act was amended. The 2002 review team also noted that the Program had not submitted five of their adopted final regulations to NRC for review. The Program subsequently submitted these amendments, which NRC reviewed with no comment.

During this review period, the Department drafted one rule package which currently is still in the process of adoption. At the time of the review, a stakeholder meeting was scheduled for October. The package contains the following six rules:

- "Revision of the Skin Dose Limit" 10 CFR Part 20 amendments (67 FR 16298) that became effective April 5, 2002, and was due for Agreement State implementation by April 5, 2005.

- "Medical Use of Byproduct Material" 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249) that became effective on April 24, 2002, and was due for Agreement State implementation by April 24, 2005.

- "Financial Assurance for Material Licensees," 10 CFR Parts 30, 40, and 70 amendments (65 FR 57327) that became effective December 3, 2003. This amendment is due for Agreement State implementation by December 3, 2006.

- "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. This amendment is due for Agreement State implementation by October 1, 2007.

- "Security Requirements for Portable Gauges Containing Byproduct Material," 10 CFR Part 30 amendment (70 FR 2001) that became effective July 11, 2005. This amendment is due for Agreement State implementation by July 11, 2008.

- "Medical Use of Byproduct Material - Recognition of Specialty Boards," 10 CFR Part 35 amendments (70 FR 16336, 71 FR 1926) that became effective April 29, 2005. This amendment is due for Agreement State implementation by April 29, 2008.

At the time of the review, the first two rules were overdue for adoption. Program management elected to delay the adoption of both rules based on the following considerations. State rulemaking policy permits only one amendment to a chapter (equivalent to a Part in the CFR) each year. Considering the controversy about Subpart J, on training and experience requirements in 10 CFR Part 35, Program management was concerned that a further amendment to Part 35 would be required within one year of the adoption of the "Medical Use of Byproduct Material" 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249) that became effective on April 24, 2002. Since the rule also included changes to Part 20, a potential conflict with the rulemaking policy existed for amendments to 10 CFR Part 20 equivalent rules. After the "Medical Use of Byproduct Material - Recognition of Specialty Boards" became effective

April 29, 2005 the program initiated rulemaking. A stakeholders meeting was scheduled for October to gain feedback on the proposed rules. The Program's experience has found that such meetings can speed the process of gaining State management approvals. However, because of uncertainties in obtaining such approvals, a specific time line for final adoption could not be given.

It is also noted that at the time of the review, there were no other new NRC regulations that the Program will need to address beyond those included in the current rulemaking. Because the Program made a management decision based on specific conditions surrounding the rules, and the Program is addressing all rulemaking currently required, the review team concluded that no systemic problem exists in Nebraska's rulemaking efforts.

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

4.2 Sealed Source and Device (SS&D) Evaluation Program

During the review period, no SS&D certificates were issued by the Program and there are currently no manufacturers of sealed sources or devices in the State. The State plans to contract with another Agreement State that has an SS&D evaluation program, if needed. The review team did not evaluate this indicator further.

4.3 Low-Level Radioactive Waste (LLRW) Disposal Program

Nebraska was originally the designated host State in the Central Interstate Low-Level Radioactive Waste Compact (the Compact) for the LLRW disposal facility. In January 1999, Nebraska withdrew from the Compact.

After the State's withdrawal from the Compact, technical staff in the Department and the Department of Environmental Quality LLRW programs were reassigned to other positions. During the review period, the State transferred all funds from all LLRW related special funds to the State General Fund. Consequently, the review team did not review this indicator.

5.0 SUMMARY

As noted in Sections 3 and 4 above, the review team found Nebraska's performance to be satisfactory for all six performance indicators reviewed. The review team made no recommendations regarding the performance of the Nebraska Agreement State program. Accordingly, the review team recommends that the Nebraska 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 IMPEP review take place in approximately four years.

LIST OF APPENDICES AND ATTACHMENT

Appendix A	IMPEP Review Team Members
Appendix B	Nebraska Organization Charts
Appendix C	Inspection Casework Reviews
Appendix D	License Casework Reviews
Appendix E	Incident Casework Reviews
Attachment	November 22, 2006, E-mail from Julia Schmitt Nebraska's Response to Draft IMPEP Report

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	**Area of Responsibility**
Richard Blanton, STP	Team Leader Technical Staffing and Training Compatibility Requirements
Linda McLean, Region IV	Status of Materials Inspection Program Technical Quality of Inspections Inspection Accompaniments
Robin Haden, NC	Technical Quality of Licensing Actions
David Everhart, Region I	Technical Quality of Incident and Allegation Activities Low Level Radioactive Waste Disposal Program

APPENDIX B

NEBRASKA ORGANIZATION CHARTS

ML062920043

APPENDIX C

INSPECTION CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY. LICENSEE NAMES ARE OMITTED AT THE REQUEST OF THE PROGRAM, BASED ON STATE SECURITY POLICY.

File No.: 1
Licensee: Redacted License No.: 02-06-03
Inspection Type: Routine Priority: 2
Inspection Date: 2/24/05 Inspector: JD

Comments:
a) Inspection report sent 3/29/05
b) No list of individuals interviewed during inspection.

File No.: 2
Licensee: Redacted License No.: 02-06-03
Inspection Type: Special Priority: 2
Inspection Date: 11/26/03 Inspector: BM

File No.: 3
Licensee: Redacted License No.: 02-06-03
Inspection Type: Routine Priority: 2
Inspection Dates: 6/8,9,13/06 Inspector: HS

File No.: 4
Licensee: Redacted License No.: 09-02-03
Inspection Type: Routine Priority: 2
Inspection Date: 8/23/06 Inspector: JD

File No.: 5
Licensee: Redacted License No.: 02-06-04
Inspection Type: Routine Priority: 2
Inspection Dates: 6/28/06, 7/20,27/06 Inspector: HS

File No.: 6
Licensee: Redacted License No.: 02-06-04
Inspection Type: Routine Priority: 2
Inspection Dates: 11/20/03, 12/2/03 Inspector: JD

File No.: 7
Licensee: Redacted License No.: 02-06-04
Inspection Type: Routine Priority: 1
Inspection Date: 12/17/04 Inspector: BF

File No.: 8
Licensee: Redacted
License No.: 01-50-01
Inspection Type: Routine,
Priority: 2
Inspection Date: 6/26/06
Inspectors: JD, HS, BM

File No.: 9
Licensee: Redacted
License No.: 99-60-01
Inspection Type: Routine
Priority: 2
Inspection Date: 7/18/06
Inspector: HS

File No.: 10
Licensee: Redacted
License No.: 01-07-08
Inspection Type: Routine
Priority: 2
Inspection Date: 6/28/06
Inspector: BM

File No.: 11
Licensee: Redacted
License No.: 99-60-01
Inspection Type: Initial
Priority: 2
Inspection Date: 3/11/04
Inspector: BM

File No.: 12
Licensee: Redacted
License No.: 01-07-08
Inspection Type: Initial
Priority: 2
Inspection Date: 2/3/04
Inspector: JD

File No.: 13
Licensee: Redacted
License No.: 01-65-02
Inspection Type: Routine
Priority: 1
Inspection Date: 2/22/06
Inspector: HS

File No.: 14
Licensee: Redacted
License No.: 02-46-01
Inspection Type: Routine, Field Site
Priority: 1
Inspection Dates: 10/12/05, 11/15/05, 12/13-14/05
Inspector: JD

File No.: 15
Licensee: Redacted
License No.: 37-03-01
Inspection Type: Routine
Priority: 1
Inspection Date: 12/1/04
Inspector: BM

File No.: 16
Licensee: Redacted
License No.: NRC-42-32219-01
Inspection Type: Reciprocity
Priority: 1
Inspection Date: 3/16/06
Inspector: BM

File No.: 17
Licensee: Redacted
License No.: TX-LO-3120
Inspection Type: Reciprocity
Priority: 1
Inspection Date: 4/14/05
Inspector: HS

File No.: 18
Licensee: Redacted
License No.: CO-931-01
Inspection Type: Reciprocity
Priority: 1
Inspection Date: 3/16/05
Inspector: HS

File No.: 19
Licensee: Redacted
License No.: NRC-54-28275-01
Inspection Type: Reciprocity
Priority: 1
Inspection Date: 5/16/06
Inspector: BM

INSPECTOR ACCOMPANIMENTS

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

Accompaniment No.: 1
Licensee: Redacted
License No.: 01-50-01
Inspection Type: Routine
Priority: 2
Inspection Dates: 9/12-13/06
Inspector: JD

Accompaniment No.: 2
Licensee: Redacted
Licensee No.: 02-06-04
Inspection Type: Routine
Priority: 2
Inspection Date: 9/14/06
Inspector: HS

APPENDIX D

LICENSE CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM. LICENSEE NAMES ARE OMITTED AT THE REQUEST OF THE PROGRAM, BASED ON STATE SECURITY POLICY.

File No.: 1
Licensee: Redacted — License No.: 01-120-01
Type of Action: New — Amendment No.: N/A
Date Issued: Pending — License Reviewer: JD

File No.: 2
Licensee: Redacted — License No.: 01-65-02
Type of Action: Amendment — Amendment No.: 16
Date Issued: 4/10/06 — License Reviewer: HS

File No.: 3
Licensee: Redacted — License No.: 09-02-03
Type of Action: Amendment — Amendment No.: 3
Date Issued: 4/24/06 — License Reviewer: HS

File No.: 4
Licensee: Redacted — License No.: 01-81-01
Type of Action: Amendment — Amendment No.: 3
Date Issued: 11/24/05 — License Reviewer: JS

File No.: 5
Licensee: Redacted — License No.: 01-08-03
Type of Action: Termination — Amendment No.: 19
Date Issued: 7/31/06 — License Reviewer: JD

File No.: 6
Licensee: Redacted — License No.: 01-39-03
Type of Action: Renewal — Amendment No.: 10
Date Issued: 9/3/03 — License Reviewer: HS

File No.: 7
Licensee: Redacted — License No.: 09-04-01
Type of Action: Termination — Amendment No.: 14
Date Issued: 1/10/06 — License Reviewer: HS

File No.: 8
Licensee: Redacted — License No.: 09-02-01
Type of Action: Amendment — Amendment No.: 67
Date Issued: Pending — License Reviewer: BM

File No.: 9
Licensee: Redacted
Type of Action: Amendment
Date Issued: 9/11/06
License No.: 01-88-01
Amendment No.: 30
License Reviewer: HS

File No.: 10
Licensee: Redacted
Type of Action: Termination
Date Issued: 1/8/04
License No.: 01-52-01
Amendment No.: 44
License Reviewer: BM

File No.: 11
Licensee: Redacted
Type of Action: Renewal
Date Issued: 3/3/06
License No.: 01-82-01
Amendment No.: 25
License Reviewer: JD

File No.: 12
Licensee: Redacted
Type of Action: Renewal
Date Issued: 2/4/03
License No.: 10-02-01
Amendment No.: 35
License Reviewer: JD

File No.: 13
Licensee: Redacted
Type of Action: Amendment
Date Issued: 7/17/06
License No.: 10-08-01
Amendment No.: 1
License Reviewer: BM

File No.: 14
Licensee: Redacted
Type of Action: Amendment
Date Issued: 5/25/06
License No.: 07-04-01
Amendment No.: 15
License Reviewer: JD

File No.: 15
Licensee: Redacted
Type of Action: Amendment
Date Issued: 11/30/05
License No.: 01-08-02
Amendment No.: 28
License Reviewer: JS

File No.: 16
Licensee: Redacted
Type of Action: Renewal
Date Issued: 3/8/05
License No.: 14-04-01
Amendment No.: 8
License Reviewer: BM

APPENDIX E

INCIDENT CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT IS INCLUDED FOR COMPLETENESS ONLY; NO SIGNIFICANT COMMENTS WERE IDENTIFIED BY THE IMPEP TEAM. LICENSEE NAMES ARE OMITTED AT THE REQUEST OF THE PROGRAM, BASED ON STATE SECURITY POLICY.

File No.: 1
Licensee: Redacted
Date of Incident: 11/13/02
Investigation Dates: 11/22, 26/02

License No.: 02-06-03
NMED No.: 021127
Type of Incident: Loss of Material
Type of Investigation: Phone/Inspection

File No.: 2
Licensee: Redacted
Date of Incident: 4/27/03
Investigation Date: 4/27/03

License No.: 37-03-01
NMED No.: 030367
Type of Incident: Equipment Failure
Type of Investigation: Phone

File No.: 3
Licensee: Redacted
Date of Incident: 7/21/04
Investigation Date: 7/22/04

License No.: 02-04-01
NMED No.: 040541
Type of Incident: : Portable Gauge Theft
Type of Investigation: Phone

File No.: 4
Licensee: Redacted
Date of Incident: 2/4/05
Investigation Date: 2/4/05

License No.: 07-04-01
NMED No.: 050094
Type of Incident: Damaged Fixed Gauge
Type of Investigation: Phone

ATTACHMENT

November 22, 2006, E-mail from Julia Schmitt
Nebraska's Response to Draft IMPEP Report

ADAMS: ML063390526

Agenda for Management Review Board Meeting
December 14, 2006, 3:00 p.m. - 5:00 p.m. (EST), TWFN-8-A1

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. (Organization of Agreement States (OAS) Liaison is Richard Ratliff from Texas.)

3. Consideration of the Nebraska IMPEP Report.

   A. Presentation of Findings Regarding Nebraska 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 Ratings
      - Recommendation for Next IMPEP Review

   C. MRB Consultation/Comments on Issuance of Report.

4. Request for comments from Nebraska representatives, OAS Liaison and State IMPEP Team Member. (State IMPEP team member is Robin Haden of North Carolina.)

5. Adjournment.

Invitees:

Martin Virgilio, DEDMRT
Karen Cyr, OGC
Charles Miller, FSME
Marc Dapas, RI
Richard Ratliff, TX
Julia Schmitt, NE
Janet Schlueter, FSME
Scott Moore, FSME
Patricia Rathbun, FSME
Richard Blanton, FSME
Linda McLean, RIV
David Everhart, RI
Robin Haden, NE
Aaron McCraw, FSME
Kim Karcagi, FSME
Osiris Siurano, FSME
Andrea Kock, OEDO

ENCLOSURE 2