

January 25, 2007

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

Karen D. Cyr, General Counsel

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

Samuel Collins, Regional 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: FOLLOWUP INTEGRATED MATERIALS PERFORMANCE
EVALUATION PROGRAM (IMPEP) REVIEW OF THE TEXAS
AGREEMENT STATE PROGRAM

This memorandum transmits, to the Management Review Board (MRB), a proposed final report (Enclosure 1), documenting the followup IMPEP review of the Texas Agreement State Program. The review of the Texas Program was conducted by an interoffice team during the period of November 13-17, 2006. The review team issued a draft report to Texas on December 14, 2006, for factual comment. Texas responded to the findings and conclusions of the review by letter dated January 19, 2007, from Kathryn C. Perkins, Assistant Director, Division for Regulatory Services. Texas had significant comments on the draft report and conclusions. The review team has prepared a comment resolution document (Enclosure 2), which provides the review team's response to the comments.

The review team is recommending that Texas' performance be found satisfactory for the indicators "Technical Staffing and Training" and "Technical Quality of Inspections." The review team is recommending that Texas' performance continue to be found satisfactory, but needs improvement, for the indicators "Status of Materials Inspection Program" and "Technical Quality of Incident and Allegation Activities." The State has made notable progress in management oversight of the Agreement State Program; however, the review team believes that additional time and actions are still necessary before the State reaches and sustains a level of satisfactory performance for all performance indicators.

January 25, 2007

Based on the need to reduce the backlog of inspections and the weaknesses identified in the incident and allegation programs, the review team is recommending that the Texas Agreement State Program continue to be found "adequate, but needs improvement," and "compatible." The review team is also recommending that the period of Heightened Oversight of the Texas Agreement State Program be continued.

The Management Review Board meeting to consider the Texas report is scheduled for **Friday, February 2, 2007, from 10:00 a.m. - 12:00 p.m., in One White Flint North, Room 3-B4.** In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for the meeting is enclosed (Enclosure 3).

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

Enclosures:
As stated

cc: Charles Bell, Deputy Executive Commissioner
Department of State Health Services

Kathryn C. Perkins, RN, MBA, Assistant Commissioner
Department of State Health Services

Richard Ratliff, Radiation Protection Officer
Department of State Health Services

Susan Jablonski, Technical Advisor
Commission on Environmental Quality

Roger Mulder, State Liaison Officer
State Energy Conservation Office

Mike Broderick, Oklahoma
Organization of Agreement
States Liaison to the MRB

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

FOLLOW-UP REVIEW OF TEXAS AGREEMENT STATE PROGRAM

November 13-17, 2006

PROPOSED FINAL REPORT

U.S. Nuclear Regulatory Commission

ENCLOSURE 1

1.0 INTRODUCTION

This report presents the results of the followup review of the Texas Agreement State Program conducted November 13-17, 2006. This followup review was directed by the Management Review Board (MRB) based on the results of the September 7-16, 2005, Integrated Materials Performance Evaluation Program (IMPEP) review.

The followup review was conducted by a review team consisting of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the Agreement State of Kansas. Review team members are identified in Appendix A. The followup review was conducted in accordance with the February 26, 2004, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the followup review, which covered the period of September 17, 2005, to November 17, 2006, were discussed with Texas management on the last day of the review.

[A paragraph on the results of the MRB meeting will be included in the final report.]

The Texas Agreement State Program is administered by two State agencies, the Department of State Health Services (the Department) and the Commission on Environmental Quality (the Commission). The followup review focused on the Department's radioactive materials program. Organization charts for the Department are included as Appendix B. At the time of the review, the Department regulated approximately 1,650 specific materials licenses. The Department's regulatory authority includes 11e.(2) byproduct material (uranium recovery activities) and currently regulates three conventional uranium mills (three tailings impoundments closing down) and five in-situ uranium mines (four active licenses and one revoked license). The Department is also currently processing an application for a commercial 11e.(2) disposal facility. The review focused on the Department's 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 Texas.

The Texas Agreement State Program was initially placed on Heightened Oversight as a result of programmatic weaknesses identified during the March 15, 2005, periodic meeting with the Department. At the April 13, 2005, meeting, the MRB decided to place the State on Heightened Oversight due to concerns with staff turnover, status of inspections, timeliness of reporting events, and status of regulations within the Department. As part of the Heightened Oversight process, the MRB requested that the Department submit a Program Improvement Plan (plan) and that bimonthly conference calls be conducted between appropriate Department and NRC staff to discuss the status of the Department's actions to address the identified performance issues.

The Department submitted their plan in a letter dated May 24, 2005, to the Director of the NRC's Office of State and Tribal Programs (STP). In the plan, the Department identified specific actions with projected completion dates to address all performance issues. An IMPEP review was conducted during the period of September 7-16, 2005. On December 14, 2005, based on the results of the September 7-16, 2005, IMPEP review, the MRB found the Texas Agreement State program adequate, but needs improvement, and compatible with NRC's program. Because of the significance of the findings, the MRB directed that the State continue

on Heightened Oversight to monitor the Department's progress in completing the actions identified in the revised plan. The MRB directed that a followup review take place in approximately one year.

The revised plan was submitted January 23, 2006, to the Deputy Executive Director for Materials, Research, State, and Compliance Program. From February 14, 2006 to October 19, 2006, NRC staff held bimonthly teleconferences with the Department to evaluate the Department's progress towards completing the corrective actions. Note, on October 1, 2006, the functions of STP were merged with a portion of the Office of Nuclear Material Safety and Safeguards to form the new Office of Federal and State Materials and Environmental Management Programs (FSME). A listing of correspondence and summaries from the bimonthly calls is included as Appendix C.

The followup review focused on the State's performance in regard to four common performance indicators: Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Inspections, and Technical Quality of Incident and Allegation Activities. The followup review also included evaluation of the actions taken by the State to address the recommendations made during the 2005 IMPEP review. Other aspects of the program not fully evaluated as part of the followup review were discussed at a periodic meeting with the Department. A periodic meeting with the Commission was held in conjunction with the review, as well. The periodic meeting summaries for the Department and the Commission are included as Appendixes D and E, respectively.

In preparation for the followup review, a questionnaire addressing the common performance indicators, Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Inspections, and Technical Quality of Incident and Allegation Activities, was sent to the Department on August 31, 2006. The Department provided a response to the questionnaire by e-mail dated October 27, 2006. A copy of the questionnaire response can be found in the NRC's Agencywide Document Access and Management System (ADAMS) using the Accession Number ML063320476.

The review team's general approach for conduct of this review consisted of: (1) examination of the Department's response to the questionnaire; (2) review of the Heightened Oversight information, including status reports; (3) review of data in the Nuclear Material Events Database (NMED) on applicable Texas incidents; (4) analysis of information from the Department's incident and allegation tracking system; (5) four field accompaniments of Department 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 the four common performance indicators reviewed and made a preliminary assessment of the Texas Agreement State Program's performance.

Section 2.0 of this report discusses the results of the followup review of the Texas Agreement State Program. Section 3.0 summarizes the review team's findings and open recommendations.

2.0 COMMON PERFORMANCE INDICATORS

The followup review addressed four of the five common performance indicators used in reviewing both NRC Regional and Agreement State radioactive materials programs. The four

indicators reviewed were: (1) Technical Staffing and Training; (2) Status of Materials Inspection Program; (3) Technical Quality of Inspections; and (4) Technical Quality of Incident and Allegation Activities.

2.1 Technical Staffing and Training

During the followup review, the review team evaluated actions taken by the Department in response to the finding of satisfactory, but needs improvement, made during the 2005 IMPEP review, as well as the status of the Department's staffing and training program.

Issues central to the evaluation of this indicator include the Department'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 Department's questionnaire response relative to this indicator, interviewed Department management and staff, and reviewed job descriptions and training records.

The review team's evaluation of the State's response to Recommendation 1, from the 2005 review, is presented below.

Recommendation 1:

The review team recommends that the Department hire and retain sufficient qualified staff to return and maintain the program at a satisfactory performance level. (Section 3.1 of the 2005 IMPEP Report)

Current Status:

The radiation control program, within the Division for Regulatory Services, consists of four units organized by function. The Radiation Program Officer is designated as the radiation control program director and provides a coordinating role among the functional groups.

During the 2005 review, there were seven vacancies in the Department's radioactive materials program (program), including four regional inspectors. At the time of this followup review, all four inspector vacancies and one Policy, Standard and Quality Assurance reviewer position had been filled. There is currently one vacancy in the program. A civil engineer in the Technical Assessments Group left the program in October 2006, and the position was posted almost immediately. At the time of the review, no applications have been received. The review team concluded that all inspector and license reviewer vacancies have been filled, and the program's regulatory activities will not be adversely affected by the single vacancy.

The qualifications of the staff were determined by examining the Department's response to the questionnaire, training records, and resumes and interviewing personnel. The review team found that all staff, including the new hires, are well qualified from an education and experience standpoint. All have at least a Bachelor's degree in a science or equivalent training and experience. Two of the four new inspectors will complete their qualifications by December 2006. The remaining two inspectors are expected to complete partial qualifications by May 2007 and are expected to complete full training and qualifications by May 2008.

The review team noted that, at the time of this review, a qualification journal was being used for license reviewers only. A draft qualification journal for inspectors is currently in the final stages of review for approval. Both journals establish minimum training requirements for personnel assigned to perform independent license reviews and inspections for materials facilities. The qualification journals are based upon the guidance in Inspection Manual Chapter (IMC) 1246 and the Final Report of the NRC/Organization of Agreement States (OAS) Training Working Group Recommendations for Agreement State Training Programs. The review team noted that despite the absence of a final, documented qualification journal for inspectors, management is well aware of the training needs of the staff. Training already completed by staff is being tracked by the program's Public Information Specialist. A spreadsheet is used to track training already attended and is used to schedule for upcoming training. The review team discussed the importance of having documented training journals for each of the staff and encouraged program management to expedite final approval and implementation of the training journal for the inspectors.

The technical staff is expected to receive basic training courses or equivalent within the first two years of starting work with the Department. In addition to the training courses, inspectors are required to demonstrate competence during supervisory accompaniments prior to being authorized to perform inspections independently.

The Department continues to deal with potential loss of a qualified workforce because of retirement of senior staff and managers in the near future. The Texas Legislature approved the new health physicist classification and the appropriations to fund the increased salaries effective September 1, 2005. The reclassification of the Department's technical staff and the resulting increases in salaries became effective January 1, 2006. Also, the Department implemented a merit pool at the beginning of their Fiscal Year 2006 to award employees for meritorious service. The Department has been working on instituting an intern program during the past year to attract entry-level staff, but was unsuccessful. Department management indicated that they intend to continue pursuing an intern program in the upcoming year.

The review team assessed the composition of the Texas Radiation Advisory Board (the Board). The Board reviews and evaluates State radiation policies and programs; makes recommendations and furnishes technical advice to the Department, the Commission and the Railroad Commission; and reviews and comments on proposed rules and guidelines relating to regulation of sources of radiation. There were four vacancies within the Board during the last IMPEP review. Currently, only one position is vacant. There have been no other changes in the Board's composition.

The review team recognizes that significant improvements have been made in this area since the previous review and believes that the current level of staffing will be able to sustain the inspection timeliness and to absorb future increased demands on the program. The review team also believes that improvements in the staffing and training will eventually result in improving the overall program's performance. Based on the Department's actions and improvements made to address Recommendation 1 of the 2005 review, the review team recommends that this recommendation be closed.

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

2.2 Status of Materials Inspection Program

The review team evaluated actions taken by the Department in response to the September 2005 IMPEP review findings, as well as the status of the inspections performed since the 2005 IMPEP review. The review team also evaluated the current and projected backlog of overdue inspections, data from the Department's inspection tracking system to determine the timeliness of inspections, and reviewed inspection files to determine the timeliness of the issuance of inspection results to licensees relative to the date of inspection. The review team's evaluation of the Department's response to Recommendation 2, from the 2005 review, is presented below.

Recommendation 2

The review team recommends that the Department review their process for issuance of inspection letters and develop a process that will allow the 31-day issuance goal for routine cases to be achieved on a consistent basis. (Section 3.2 of the 2005 IMPEP Report)

Current Status

During the 2005 review, that review team found that 15 out of 29 inspection letters evaluated were issued greater than 31 days from the completion of the inspection. By the time of this followup review, the Department eliminated the backlog of inspection reports and has issued the overdue inspection letters. Since March 2006, there has been an improvement in meeting the 31-day issuance goal for routine cases. The review team noted that this has been achieved on a consistent basis. The Department now has three fully trained quality assurance reviewers that issue inspection letters. At the time of the 2005 IMPEP review, there were only two quality assurance reviewers. The Department uses a database to log inspection reports submitted by the regions and to track inspection reports. In addition, the quality assurance reviewers pay particular attention to the due date for the inspection letters to be issued. Based on the Department's actions and improvements made to address Recommendation 2 of the 2005 review, the review team recommends that this recommendation be closed.

The review team's evaluation of the Department's inspection priorities revealed that inspection frequencies for each type of license were the same or more frequent than similar license types listed in IMC 2800. The Department requires more frequent inspections for the following license categories: all broad scope industrial and academic licenses are inspected every two years, compared to the NRC's two to five year intervals; self-shielded irradiators are inspected every three years, as opposed to the NRC's five year interval; all industrial radiography licenses are inspected annually, whereas the NRC inspects fixed industrial radiography locations every two years; and all research and development licenses are inspected at three year intervals, whereas the NRC inspects Type A research and development licenses every three years and the other research and development licenses are inspected every five years.

At the time of this followup review, there were eight Priority 1, 2, and 3 inspections and 12 initial inspections overdue. The Department staff generated a report indicating that 275 Priority 1, 2, and 3 inspections were completed on time during the review period. The review team noted that, additionally, 51 Priority 1, 2, and 3 inspections and 42 initial inspections were completed overdue during the review period. The 113 overdue, or conducted overdue, inspections represented 23 percent of the 484 core inspections performed by the Department during the review period.

The review team noted that the Department allowed routine inspections to become overdue while attempting to reduce the existing inspection backlog. The review team concluded that the root causes for the continued backlog were changes in staff responsibilities, due to the Department's reorganization, staffing shortages, and the lack of capabilities to project future inspections and workload due to issues with the Department's inspection tracking system, which could only identify those licensees whose inspections were overdue. Within the last month, the Department has made improvements to the inspection tracking system and now has the capability to project upcoming inspections. The review team believes that these improvements will substantially assist the Department in achieving and sustaining a satisfactory level of performance.

In its response to the questionnaire and review of the files, the Department inspected 3 out of 14 candidate reciprocity licensees during the review period. The number of reciprocity inspections performed by the Department exceeded the 20 percent criterion prescribed in IMC 1220.

The Department issued the Increased Controls to 236 licensees. The Department identified 120 licensees that needed to be inspected within the first year. As of November 13, 2006, 63 Increased Controls inspections have been performed. The Department appears to be on track to complete all inspections within the time frames established by the NRC. The review team evaluated the Department's methodology for prioritization of inspections and determined that it is compatible with the NRC's methodology.

The review team recognizes the significant improvements made by the Department on this common performance indicator since the 2005 review. There has been a significant reduction of inspection backlog and the length of time that the inspections are overdue. In addition, improvements made to the inspection tracking system now provide the Department the capability to project future inspection due dates. Despite the improvements, the review team believes that additional time is necessary for the Department to reach and sustain performance at a satisfactory level for this indicator. In discussions with Department management on November 16, 2006, they indicated their intention to eliminate its inspection backlog by February 28, 2007.

Based on the IMPEP evaluation criteria, the review team recommends that Texas' performance with respect to the indicator, Status of Materials Inspection Program, continue to be found satisfactory, but needs improvement.

2.3 Technical Quality of Inspections

The review team evaluated the inspection reports and enforcement documentation and interviewed inspectors for 23 radioactive materials inspections conducted during the review period. The casework reviewed included work performed by 10 of the Department'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, gamma stereotactic radiosurgery, research and development, and industrial radiography. The review team also evaluated the casework and supporting documentation for two Increased Controls inspections. Appendix F lists the inspection casework reviewed, with case-specific comments, as well as the results of the inspector accompaniments.

Based on the casework evaluated, the review team noted that the routine inspections covered all aspects of the licensees' radiation safety programs. The review team found that inspection reports were generally complete, consistent, and had sufficient documentation to ensure that a licensee's performance with respect to health and safety was acceptable. The review team noted that exit interviews were generally not held with appropriate licensee personnel (i.e., the radiation safety officer or a member of management). The review team discussed this issue with Department management and inspectors during the review. The review team also noted that incident reports were not always present in the license files; therefore, in some cases, the inspectors were not always able to follow up on incidents at the next inspection. This issue was discussed with Department management during the review. During the on-site review, the Department demonstrated a computer application recently designed by the Department that will ensure that incident information is provided to the inspectors.

The review team's evaluations of the Department's response to Recommendations 3 and 4, from the 2005 review, are presented below:

Recommendation 3:

The review team recommends that the State adhere to the policy of annual supervisory accompaniments of all qualified inspectors. (Open recommendation from the 2001 IMPEP Report) (Section 3.3 of the 2005 IMPEP Report)

Current Status:

The review team found that during the review period, annual inspector accompaniments have been conducted for Calendar Year 2006 with one exception. The last accompaniment is scheduled to be completed by the middle of December. In addition, the Department has implemented a procedure to ensure that accompaniments will be conducted annually. Based on the Department's actions and improvements made to address Recommendation 3 of the 2005 review, the review team recommends that this recommendation be closed.

Recommendation 4:

The review team recommends that the State develop a process to ensure that inspections are performed in accordance with their own performance-based inspection procedures. (Section 3.3 of the 2005 IMPEP Report)

Current Status:

In July 2006, the Department conducted training on performance-based inspection techniques. After the training, the Department required inspectors to conduct performance-based inspections beginning August 1, 2006. Four Department inspectors were accompanied during inspections by a review team member during the weeks of October 18, and October 30, 2006. Inspector accompaniments were conducted at the following license types: radiography, medical institutions - diagnostic and brachytherapy/teletherapy. The review team member also accompanied an inspector on an Increased Controls inspection. The review team noted that the inspectors applied performance-based inspection techniques during the inspections. Each

inspector demonstrated appropriate safety perspective and knowledge of the regulations. The inspectors were well-prepared and thorough in their audits of the licensees' radiation safety programs.

The review team noted that the documentation in the inspection reports issued after the training course showed that the reports documented the inspector's observation of licensed operations and handling of radioactive material. The inspectors documented observing workers demonstrate or explain selected activities, if no licensed activities were being performed. Based on the Department's actions and improvements made to address Recommendation 4 of the 2005 review, the review team recommends that this recommendation be closed.

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

2.4 Technical Quality of Incident and Allegation Activities

In evaluating the effectiveness of the State's actions in responding to incidents, the review team examined the State's response to the questionnaire relative to this indicator, evaluated selected incidents reported for Texas in NMED against those contained in the Department's files, and evaluated the casework and supporting documentation for 13 radioactive material incidents. A listing of the incident casework examined, with case-specific comments, may be found in Appendix G. The review team also evaluated the State's response to eight allegations involving radioactive materials, including one allegation referred to the State by the NRC during the review period.

The review team discussed the State's incident and allegation procedures, file documentation, NMED, and notification of incidents to the NRC's Headquarters Operations Center with Department managers and selected staff. The review team's evaluation of the State's response to Recommendation 5, from the 2005 review, is presented below.

Recommendation 5:

The review team recommends that the Department report all significant and routine events, as well as followup event information, to the NRC in accordance with STP Procedure SA-300, "Reporting Material Events." (Open recommendation from the 2001 IMPEP Report) (Section 3.5 of the 2005 IMPEP Report)

Current Status

Responsibility for initial response and followup actions to radioactive material incidents and allegations is with the Incident Investigation Program under the Division for Regulatory Services. Written procedures exist for handling incidents and allegations, which are referred to as "complaints" by the Department. The Department procedures require on-site investigation for each significant incident and a timely response to allegations. All incidents and allegations are tracked by a numerical identification system. In most cases, the identification numbers for incidents were cross-referenced on the NMED report.

The 13 incidents the review team selected for evaluation included the following categories: medical event, overexposure, transportation, lost and stolen gauges, loss of material,

abandoned source, defective equipment, and loss of administrative control. The review team found that the Department's response to incidents was generally complete and comprehensive. Initial responses were prompt and well-coordinated, and the level of effort was commensurate with the health and safety significance.

The review team found a total of 49 incidents reported to the NRC's contractor responsible for maintaining NMED during the review period. These incidents were evaluated for timeliness in reporting. Three out of 20 incidents requiring immediate notification were reported in excess of 10 days. Nine out of 10 incidents requiring 24-hour notification exceeded 24 hours, including two cases exceeding 300 days. Two out of four incidents requiring 5-day notification exceeded five days, and five out of 15 incidents requiring 30-day notification exceeded 30 days, including one reported in excess of 300 days.

During the 2001 and 2005 IMPEP reviews, the review teams found that the Department had not updated the NMED records with followup or closure information. The followup review team discussed the issue of reporting incidents and providing followup information with the Department management and staff. The review team identified instances of followup information being requested from the licensee, yet the event was closed without the requested information being provided. The review team also identified events closed within the Department files with proper information, but the NMED records were closed without being updated.

The review team's evaluation of the eight allegations indicated that the Department took prompt and appropriate action in response to the alлегers' concerns. Through review of the casework and interviews with staff, the review team determined that the Department provided feedback to alлегers either verbally or in writing, when possible. Any alleger requesting anonymity is informed that every effort will be made to protect his/her identity, but protection cannot always be guaranteed. All interviewed staff were knowledgeable of the Department's allegation procedure. There were no performance issues identified from the review of allegation casework. The review team did note some inconsistencies and completeness issues with some of the allegation documentation. The comments were provided to Department management during the review.

The review team was provided a draft copy of the "Incident Investigation Program Procedure," dated October 10, 2006. The procedure provides detailed guidance on the administrative duties of logging and filing the incident and preparing the summary information for quarterly publication. Much less guidance is provided in reporting, investigating, and closing the event. The procedure identifies several possession changes of the data (reviewer, inspector, investigator, quality assurance reviewer) each having responsibility for a piece of the overall event. Supervisory oversight appears to be missing in the critical areas of NRC/NMED reporting to ensure the correct reporting criteria is used, a proper investigation is conducted, and closure information and documentation is complete so the event or allegation could be closed.

The review team noted that the quality of documentation and timeliness of reporting has improved over previous IMPEP reviews; however, the review team continued to find documentation, updating, and timeliness issues with respect to the NMED records and the Department's incident and allegation files. While the review team noted significant improvements, the improvements have not been in place long enough to truly evaluate their

effectiveness and there has not been enough time for sustained performance to be exhibited. Thus, the review team recommends that Recommendation 5 of the 2005 review remain open.

Based on the IMPEP evaluation criteria, the review team recommends that Texas' performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, continue to be found satisfactory, but needs improvement.

3.0 SUMMARY

The review team found Texas' performance to be satisfactory for the performance indicators, Technical Staffing and Training and Technical Quality of Inspections, and satisfactory, but needs improvement, for the performance indicators, Status of Materials Inspection Program and Technical Quality of Incident and Allegation Activities. The Department has made significant progress since the last IMPEP review; however, the review team believes that additional time and actions are still necessary before the Department fully reaches and sustains a level of satisfactory performance for all performance indicators. Accordingly, the review team recommends that the Texas Agreement State Program continue to be found adequate, but needs improvement, and compatible with NRC's program. The review team recommends that the period of Heightened Oversight continue in order to assess the progress of the State in implementing corrective actions in a revised plan addressing the inspection backlog and the open recommendation from this review. The review team recommends that the bimonthly status reports and conference calls to discuss progress on the State's revised plan also continue. Based on the results of this review, the review team recommends that another followup IMPEP review, focusing on the inspection backlog and event reporting, take place in approximately 12-18 months.

RECOMMENDATION:

The review team recommends that the Department report all significant and routine events, as well as followup event information, to the NRC in accordance with FSME Procedure SA-300, "Reporting Material Events." (Section 2.4) (Open recommendation from the 2001 IMPEP Report)

LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	Texas Organization Charts
Appendix C	Heightened Oversight Program Correspondence
Appendix D	Periodic Meeting Summary - Department of State Health Services
Appendix E	Periodic Meeting Summary - Commission on Environmental Quality
Appendix F	Inspection Casework Reviews
Appendix G	Incident Casework Reviews
Attachment	January 19, 2007 Texas' Response from Kathryn C. Perkins to Draft Followup IMPEP Report

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Kathleen Schneider, FSME	Team Leader Periodic Meetings
Osiris Siurano, FSME	Technical Staffing and Training Periodic Meetings
Tomas Herrera, FSME	Status of Materials Inspection Program
Linda McLean, RIV	Technical Quality of Inspections Inspector Accompaniments
James Harris, Kansas	Technical Quality of Incident and Allegation Activities

APPENDIX B

TEXAS ORGANIZATIONAL CHARTS

ADAMS ACCESSION NO.: ML063320476

PAGES: 23-28

APPENDIX C

HEIGHTENED OVERSIGHT PROGRAM CORRESPONDENCE

Minutes of Bimonthly Conference Calls:

1. June 24, 2005 Minutes (ML063330125)
2. August 23, 2005 Minutes (ML063330108)
3. February 14, 2006 Minutes (ML063330116)
4. April 10, 2006 Minutes (ML063330096)
5. August 7, 2006 Minutes (ML062280607)
6. October 10, 2006 Minutes (ML063330133)

Letters from/to Texas:

1. December 27, 2005 Letter to Richard B. Bays and Dan Eden, from M. J. Virgilio - Texas Final IMPEP Report (ML053560316)
2. January 23, 2006 Letter to M. J. Virgilio from Richard B. Bays - Response to Final IMPEP Report (ML060390294)
3. March 16, 2006 Letter to Richard B. Bays, from J. Schlueter - Comments on the Texas Program Improvement Plan (ML060750513)

APPENDIX D

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DATE OF MEETING: NOVEMBER 12, 2006

A periodic meeting was held with the Radiation Control Program Officer and staff by Kathleen Schneider, Team Leader, during the followup review pursuant to the former Office of State and Tribal Programs (STP) Procedure SA-116, "Periodic Meetings with Agreement States Between IMPEP Reviews." Those topics normally documented during the periodic meeting that were reviewed and documented as part of the followup review will not be discussed in this Appendix. The following topics were discussed.

1. Status of Recommendations from 2005 Report

See Sections 2.1 through 2.4 for details on Recommendations 1, 2, 3, 4 and 5. It is practice to recommend that items and recommendations that were not reviewed as part of the specific performance indicators during the followup review be closed at the next IMPEP review; however, the review team recommends that Recommendation 6 be closed at this time based on the file reviews and status of the Texas Department of State Health Services' (the Department's) actions in addressing the recommendations.

- a. Recommendation 6: The review team recommends that the Department develop and implement an inspection program to verify that the QA/QC requirements in the SS&D Registry sheets are being implemented by the manufacturer. (Section 4.2.2)

Current Status: The Department has developed an inspection program to verify that the quality assurance/quality control (QA/QC) requirements in the sealed source and device (SS&D) registry sheets are being implemented by the manufacturer. The program has been in place since August 1, 2006. The inspectors have been trained to use a check sheet to determine whether the licensee is manufacturing sources or devices according to the QA/QC programs submitted to the Department as part of the SS&D application. If the inspector has any questions, they are to contact the Department's SS&D reviewers who are more knowledgeable of the licensees QA/QC programs. In the event that there appears to be a significant deviation from the QA/QC program the SS&D reviewer will perform a complete review of the manufacturers QA/QC program. Although this program has only been in place for three months there has not been an opportunity to perform a review. However, based on the program put in place by the Department, the review team believes that the recommendation has been addressed. The review team recommends that this item be closed.

- b. Recommendation 7: The review team recommends that the Department conduct an evaluation of the uranium recovery program workload and hire the necessary staff to adequately address the workload. (Section 4.4.1)

Current Status: The Department added three additional positions to the uranium recovery program in the Technical Assessments Group. Although all three positions were filled, a vacancy (civil engineer) occurred which has not yet been filled. The position was posted but not filled due to a lack of applicants and an issue with the interpretation of the authorization with the Office of the Comptroller. Fees collected, which would cover the position, are put in the general fund and must be appropriated for the Department.

The recent increase in the cost of uranium has caused a resurgence in the uranium recovery industry. There is consideration in the legislation for uranium fees that are collected to be designated as a dedicated fund for the Department rather than being put in the general funds. The Department is continuing to evaluate their workload in light of the resurgence of the uranium recovery industry.

It is recommended that this item be evaluated at the next IMPEP review.

- c. Recommendation 8: The review team recommends that the Department prepare necessary supporting documentation identifying the bases for the licensing actions associated with reclamation plans for the three conventional mills. (Section 4.4.4) (Open recommendation from the 2001 IMPEP report)

Current Status: The Department is continuing to work on the necessary supporting documentation. However, with the loss of one of the civil engineer positions, the work effort cannot continue on the previously anticipated schedule. It is recommended that this item be evaluated at the next IMPEP review.

2. Strengths and/or weaknesses of the State program as identified by the State including identification of actions that could diminish weaknesses.

Program Strengths: The Department continues to have well trained, experienced, and dedicated staff members who are often called on as resources by both Federal and other State agencies. The Department staff believes that they were very successful with the implementation of the reorganization.

The Radiation Control Program Officer indicated that the enforcement review committee was an unanticipated strength of the new organization. The Regional State Agreement Officer and the Region IV Division Director for Nuclear Materials Safety attended a meeting during the review.

Program Weaknesses: Funding remains a significant challenge for the Department which collects sufficient funds,; however, these fees are not dedicated to the Department. The Department receives its funds through general appropriations.

3. Feedback on NRC's program as identified by the State and including identification of any action that should be considered by NRC.

The Department management expressed that the NRC reorganization came as a surprise. However, they noted that there are good interactions with Region IV.

4. Status of State Program:

a. Staffing and Training: See Section 2.1.

b. Materials Inspection Program: See Section 2.2.

c. Regulations and Legislative Changes: The status of the regulation was discussed with the staff. All regulations required for compatibility have been issued in final and reviewed by NRC. NRC Amendment "Financial Assurance for Materials Licensees" became due on December 3, 2006, and has not yet been adopted. Eight amendments have comments that will need to be addressed to meet the compatibility and health and safety categories. Staff has a schedule for the revisions and upcoming regulations. They are presently working on the transportation requirements, medical use of byproduct material, 2005 revisions and radiography revisions to address NRC comments. The remaining amendments with comments will be addressed during the four year cycle revisions in 2010.

A proposed bill to transfer authority from the Department to the Texas Commission on Environmental Quality over 11e.(2) material, processing and disposal of radioactive material is being discussed. Department management expects the State's legislature to address this issue in January 2007.

d. Program Reorganizations: The Department is still examining the efficiency and effectiveness of the present organization. Some additional modifications could be possible in the future.

e. Changes in Program Budget/Funding: The Department experienced \$500,000 deficit due to the nature of the funding in Texas. The Department raised their fees and had understood that monies collected over the appropriation authorization would be given back to the Department. The Comptroller's interpretation of the authorization rider was that the monies remained in the general fund even though the fees were sufficient to cover this deficit. Department representatives continue to work with Senate contacts to explore dedicated funding for the Department

5. Event Reporting: See Section 2.4.

6. Response to Incidents and Allegations: See Section 2.4.

7. Information Exchange and Discussion:

- a. Current State Initiatives: Discussed in the followup IMPEP Review report.
- b. State's Mechanisms to Evaluate Performance: The Department continuously audits performance by performing peer reviews of licensing actions and SS&D reviews. In addition, all inspection reports are reviewed by quality assurance reviewers. The radiation control program management attend a monthly meeting which is facilitated by the Radiation Control Program Officer to discuss pertinent issues in order to maintain a cohesive program. The Radiation Control Program Officer indicated that prior to the reorganization, the staff conducted pre-IMPEP audits and that the Department would like to reinstate the audits. The Department also receives State audits.

APPENDIX E

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DATE OF MEETING: NOVEMBER 15, 2006

A periodic meeting was held with Texas Commission on Environmental Quality (the Commission) staff during the followup review pursuant to the former Office of State and Tribal Programs (STP) Procedure SA-116, "Periodic Meetings with Agreement States Between IMPEP Reviews." During the meeting, the topics suggested in a letter dated August 31, 2006, from Mrs. Schneider to Ms. Susan Jablonski were discussed.

ATTENDEES

NRC

Kathleen Schneider, Team Leader, Senior Project Manager, FSME
Osiris Siurano, Health Physicist, FSME

Commission Staff

Devane Clarke, Manager, Radioactive Material Licensing
Don Redmond, Office of Legal Services
Amie Richardson, Office of Legal Services

Commission staff were present during the introductory part of the meeting but did not participate in the discussion

DISCUSSION

The following is a summary of the meeting held in Austin, Texas, with Commission staff.

1. Status of State's actions to address all open previous IMPEP review findings and/or open recommendations.

There were no recommendations for the Commission during the 2005 IMPEP review.

2. Strengths and/or weaknesses of the State program as identified by the State or NRC including identification of actions that could diminish weaknesses.

Strengths:

Commission management identified the staff as their major strength. In general, the Commission staff is well-qualified and experienced.

Weaknesses:

The Commission lost one staff, a certified health physicist, who accepted another job offer. There are constraints due to budget issues and out-of-State travel prohibitions.

Staff training in NRC courses is challenging. The Commission is willing to host a licensing course as an alternative.

3. Feedback on NRC's program as identified by the State and including identification of any action that should be considered by NRC.

The Commission has an interest in NRC's definition for NORM as a result of the Energy Policy Act of 2005. The Commission staff believes the new definition will highly impact their regulatory responsibilities.

There was a short discussion on NRC's reorganization, including the new location and name of the former STP. The status of the current initiatives of current non-Agreement States intending to become Agreement States was also discussed.

4. Status of State Program:

a. Staffing and Training:

There is currently one open position. No additional changes have taken place since the last Integrated Materials Performance Evaluation Program (IMPEP) review. One staff member retired since the last IMPEP but was re-hired. There are no timing limitations for rehiring this type of staff.

b. Materials Inspection Program:

There are some legacy sites within the State. All sites are inspected once a year. There are no inspection backlogs.

c. Regulations and Legislative Changes:

There have not been any changes since the last IMPEP review. A proposed bill to transfer authority from the Department to the Commission over 11e.(2) material, processing and disposal of radioactive material will be discussed by the State's legislature in its next session. A short discussion on the Commission's regulations was held. There is no information on the NRC State Regulation Status sheet for the following regulations:

1997-6 - License Termination Rule - there is no information on the status of the State's final rule

1998-1 - Deliberate Misconduct by Unlicensed Persons - Parts 30, 40, 61, 70, 71, 150

1998-6 - Transfer for Disposal and Manifests: Minor Technical Conforming Amendment - Part 20

2002-2 - Revision of the Skin Dose Limit - Part 20

2003-1 - Financial Assurance for Materials Licensees - Parts 30, 40, 70

NRC staff provided an overview of NRC's regulation review process and information on the Regulation Toolbox on Office of Federal and State Materials and Environmental Management Programs' website. The Commission staff noted that licensees are required to follow the Department's transportation regulations.

d. Program Reorganizations:

The Radioactive Material Licensing manager changed in July 2006.

e. Changes in Program Budget/Funding:

No changes have taken place since the last IMPEP review.

5. Event Reporting, Including Followup and Closure Information in NMED:

No incidents have been reported since the last IMPEP review. Commission staff discussed an ongoing enforcement case where there was a release to the sewer system. The event was not reportable to NRC.

6. Response to Incidents and Allegations:

There are no allegations for the Commission since the last IMPEP review.

7. Emerging Technologies:

There is an application for commercial disposal of NORM from public water supplies currently under the Commission's review. The licensee is proposing injection wells as their disposal strategy.

The Commission staff discussed their review of an application for a low-level radioactive waste site which may not be completed as specified by State statutes. The application quality was deemed inadequate and milestones were not met. The applicant requested an extension which was granted until May 1, 2007. The State's legislature will review this process in view that due dates specified by law were not met.

A request for rulemaking, from Waste Control Specialists is currently under the Commission's review. The licensee is requesting the State to adopt a rule that would exempt NRC approved alternate disposals under 10 CFR Part 20.2002 from State regulation/approval.

The Commission staff discussed the Disposal Unit Source Term (DUST) computer code provided by NRC staff. They indicated that they were unable to use the DUST code and provided comments. These comments will be forwarded to the Division of Waste Management and Environmental Protection.

APPENDIX F

INSPECTION CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY.

File No.: 1
Licensee: Laredo Regional Medical Center LP
Inspection Type: Routine, Unannounced
Inspection Date: 6/29/06
License No.: L02192
Priority: 3
Inspector: RW

Comment:
Conducted overdue.

File No.: 2
Licensee: Team Industrials Services, Inc.
Inspection Type: Routine, Unannounced
Inspection Dates: 9/12/06, 10/3/06
License No.: L00087
Priority: 1
Inspector: HD

File No.: 3
Licensee: Team Industrial Services, Inc.
Inspection Type: Increased Controls, Announced
Inspection Date: 10/4/06
License No.: L00087
Priority: 1
Inspector: HD

File No.: 4
Licensee: Baker Atlas
Inspection Type: Routine, Unannounced
Inspection Date: 6/8/06
License No.: L00446
Priority: 3
Inspector: HD

File No.: 5
Licensee: Baker Hughs Oilfield Operations, Inc.
Inspection Type: Increased Controls, Announced
Inspection Date: 8/21/06
License No.: L00446
Priority: 1
Inspector: HD

File No.: 6
Licensee: Cardinal Health
Inspection Type: Routine, Announced
Inspection Date: 3/22/06
License No.: L01911
Priority: 2
Inspector: HD

File No.: 7
Licensee: Acuren Inspection, Inc.
Inspection Type: Routine, Unannounced
Inspection Date: 3/10/06
License No.: L01774
Priority: 1
Inspector: HD

File No.: 8
Licensee: Baker Hughs Oilfield Operations, Inc.
Inspection Type: Routine, Announced
Inspection Date: 6/8/06
License No.: L00446
Priority: 3
Inspector: HD

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File No.: 9

Licensee: Kelsey-Seybold Clinic PA
Inspection Type: Initial, Announced
Inspection Date: 2/24/06

License No.: L00391
Priority: 3
Inspector: KZ

Comments:

- a) Exit with technologist only.
- b) Report issued late.

File No.: 10

Licensee: The University of Texas Medical Branch
Inspection Type: Routine, Announced
Inspection Date: 7/19/06

License No.: L01299
Priority: 3
Inspector: LC

Comment:

Conducted overdue.

File No.: 11

Licensee: Big Spring Hospital Corporation
Inspection Type: Routine, Announced
Inspection Date: 9/29/06

License No.: L00763
Priority: 3
Inspector: WK

File No.: 12

Licensee: Cardinal Health
Inspection Type: Routine, Announced
Inspection Date: 1/11/06

License No.: L01999
Priority: 2
Inspector: WK

Comment:

Report issued late.

File No.: 13

Licensee: Scott and White Memorial Hospital
Inspection Type: Initial, Announced
Inspection Dates: 1/5/06, 5/24/06

License No.: L00331
Priority: 2
Inspector: JH

Comment:

Exit with technologist only.

File No.: 14

Licensee: Texas Oncology PA
Inspection Type: Routine, Unannounced
Inspection Date: 6/26/06

License No.: L00154
Priority: 2
Inspector: RW

Comments:

- a) Conducted overdue.
- b) Report issued late.

File No.: 15

Licensee: East Texas Medical Center
Inspection Type: Routine, Announced
Inspection Date: 4/7/06

License No.: L00977
Priority: 3
Inspector: SF

File No.: 16

Licensee: Val Verde Regional Medical Center
Inspection Type: Routine, Announced
Inspection Date: 9/28/06

License No.: L01967
Priority: 2
Inspector: RW

Comment:

Exit with technologist only.

File No.: 17

Licensee: Baylor College of Dentistry
Inspection Type: Routine, Announced
Inspection Date: 8/7/06

License No.: L00323
Priority: 3
Inspector: SP

File No.: 18

Licensee: United Regional Health Care System, Inc.
Inspection Type: Routine, Announced
Inspection Date: 9/19/06

License No.: L00350
Priority: 2
Inspectors: ES, SF

File No.: 19

Licensee: Weaver Services, Inc.
Inspection Type: Routine, Announced
Inspection Date: 10/25/06

License No.: L01489
Priority: 2
Inspectors: SF, ES

File No.: 20

Licensee: Q Pro Technical Services
Inspection Type: Initial, Announced
Inspection Date: 10/12/06

License No.: L05980
Priority: 3
Inspector: RH

File No.: 21

Licensee: American X-Ray & Inspection Services, Inc.
Inspection Type: Initial, Announced
Inspection Date: 8/23/06

License No.: L05974
Priority: 1
Inspector: WK

Comment:

Report issued late.

File No.: 22

Licensee: Physician Reliance Network, Inc.
Inspection Type: Initial, Announced
Inspection Date: 11/17/06

License No.: L05896
Priority: 3
Inspector: SF

File No.: 23

Licensee: Heart Center of Dallas
Inspection Type: Initial, Announced
Inspection Date: 8/11/06

License No.: L05942
Priority: 3
Inspector: SP

INSPECTOR ACCOMPANIMENTS

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

Accompaniment No.: 1

Licensee: Doctors Hospital
Inspection Type: Routine, Announced
Inspection Date: 10/18/06

License No.: L01366
Priority: 2
Inspector: SF

Accompaniment No.: 2

Licensee: South Austin Hospital
Inspection Type: Routine, Announced
Inspection Date: 10/31/06

License No.: L03273
Priority: 1
Inspector: RW

Accompaniment No.: 3

Licensee: Kelsey-Seybold Clinic PA
Inspection Type: Routine, Announced
Inspection Date: 11/1/06

License No.: L00391
Priority: 2
Inspector: KZ

Accompaniment No.: 4

Licensee: Matrix Metals LLG
Inspection Type: Routine, Announced
Inspection Date: 11/2/06

License No.: L00312
Priority: 1
Inspector: RH

APPENDIX G

INCIDENT CASEWORK REVIEWS

NOTE: CASEWORK LISTED WITHOUT COMMENT ARE INCLUDED FOR COMPLETENESS ONLY.

File No.: 1

Licensee: Texas Hi Temp Alloy Processors

Date of Incident: 9/21/05

Investigation Date: N/A

License No.: G02273

Incident Log No.: I-8273; NMED - 050723

Type of Investigation: N/A

Comments:

- a) Immediate notification to NRC required. Department notified 10/26/05, Department sent notification to NRC on 10/28/05.
- b) Documentation of investigation is missing from the State file.

File No.: 2

Licensee: MACTEC Engineering and Consulting

Date of Incident: 12/12/05

Investigation Date: N/A

License No.: L05490

Incident Log No.: I-8286; NMED - 060014

Type of Investigation: N/A

Comments:

- a) Immediate notification to NRC required. Department notified 12/12/05; Department sent notification to NRC 2/16/06 (66 days).
- b) Closure information documented in Department file not reflected in the NMED record for completeness.
- c) Documentation of investigation is missing from the Department file.

File No.: 3

Licensee: JRJ Paving

Date of Incident: 1/20/06

Investigation Date: N/A

License No.: L05307

Incident Log No.: I-8290; NMED - 060055

Type of Investigation: N/A

Comments:

- a) Note in file dated 3/22/06 stating licensee needs to send 30-day report. As of 11/13/06, "still receiving info." It appears that file was closed without all the required information.
- b) Closure information is not included in Department file. Documentation of investigation is missing from the Department file.

File No.: 4

Licensee: Memorial Herman Hospital

Date of Incident: 1/10/06

Investigation Date: 1/12/06

License No.: L00650

Incident Log No.: I-8288; NMED - 060078

Type of Investigation: E-mail

Comments:

- a) Twenty four-hour notification to NRC required. Department notified 1/20/06 and Department sent notification to NRC 2/2/06 (13 days).
- b) Information on prescribed organ dose and actual dose was requested of licensee. Information was not received, but the Department closed the file regardless.

File No.: 5

Licensee: Saint-Gobain Ceramics and Plastics

Date of Incident: 12/24/05

Investigation Date: N/A

License No.: L04895

Incident Log No.: I-8296; NMED - 060088

Type of Investigation: N/A

Comment:

NMED record has not been updated to indicate the event is closed.

File No.: 6

Licensee: Texas Instruments

Date of Incident: 2/13/06

Investigation Date: 2/15/06

License No.: G01800

Incident Log No.: I-8303; NMED - 0601277

Types of Investigations: Telephone, E-mail

File No.: 7

Licensee: Gilbert Texas Construction

Date of Incident: 3/20/06

Investigation Date: N/A

License No.: L04569

Incident Log No.: I-8313; NMED - 060225

Type of Investigation: N/A

Comment:

Narrative information in NMED is not correct and unclear.

File No.: 8

Licensee: Weaver Services

Date of Incident: 2/15/06

Investigation Date: N/A

License No.: L01489

Incident Log No.: I-8316; NMED - 060230

Type of Investigation: N/A

Comment:

Documentation of investigation is missing from the file.

File No.: 9

Licensee: Halliburton Energy Services

Date of Incident: 3/27/06

Investigation Date: N/A

License No.: L02113

Incident Log No.: I-8333; NMED - 060335

Type of Investigation: N/A

Comment:

Documentation of investigation is missing from the file.

File No.: 10

Licensee: Nan Ya Plastics Corp

Date of Incident: 6/16/06

Investigation Date: N/A

License No.: G01847

Incident Log No.: I-8339; NMED - 060422

Type of Investigation: N/A

Comments:

Documentation of investigation is missing from the file.

File No.: 11

Licensee: Ben Taub General Hospital

License No.: L01303

Date of Incident: 6/17/06

Incident Log No.: I-8350; NMED - 060442

Investigation Date: 6/20/06

Types of Investigations: E-mail, Telephone

Comments:

- a) Effect of missing source on patients prescribed therapeutic dose compared to actual dose received is not addressed.
- b) Possible skin dose due to source next to patient for 37 hours is not addressed.
- c) Immediate notification to NRC required. Department notified 6/20/06; Department sent notification to NRC 7/12/06 (22 days).

File No.: 12

Licensee: Goolsby Testing Laboratory

License No.: L03115

Date of Incident: 10/4/06

Incident Log No.: I-8365; NMED - 060629

Investigation Date: 10/6/06

Type of Investigation: On-site

Comments:

- a) Extremity exposure has not been addressed.
- b) Blood work performed, physician interpretation of results not addressed.

File No.: 13

Licensee: Texas Gamma Ray

Licensee No.: L05561

Date of Incident: 5/1/06

Incident Log No.: I-8348; NMED - 060425

Investigation Date: 8/4/06

Type of Investigation: On-site

Comments:

- a) Narrative of NMED record does not accurately reflect information in the incident file.
- b) Change in total effective dose equivalent (TEDE) assigned to worker has not been approved by Department management.
- c) Department investigation file is open, however, the NMED record indicates the event is closed.

ATTACHMENT

January 19, 2007, Letter from Kathryn C. Perkins
Texas' Response to Draft Followup IMPEP Report

ADAMS: ML070240545

RESPONSE TO TEXAS' COMMENTS
TO THE DRAFT 2006 FOLLOWUP IMPEP REPORT

The Department provided suggested corrections in underline/strikeout format to the draft IMPEP report. Comments on the report were provided in italics within the text of the report. The comments and corrections have been captured below. The IMPEP review team evaluated each of the corrections and comments from the State of Texas and either agreed, agreed in part, or disagreed with the comments, or acknowledged the additional information provided by the State. Changes were made as noted in the responses below.

Comment 1:

Draft Report, Introduction, fourth paragraph.

The Texas Agreement State Program is administered by two State agencies, the Department of State Health Services (the Department) and the Commission ~~for~~ on Environmental Quality (the Commission). The followup review focused on the Department's radioactive materials program. Organization charts for the Department are included as Appendix B. At the time of the review, the Department regulated approximately 1,650 specific materials licenses. The Department's regulatory authority includes 11e.(2) byproduct material (uranium recovery activities) and currently regulates three conventional uranium mills (three tailings impoundments closing down) and five in-situ uranium mines (four active licenses and one revoked license). The Department is also currently processing an application for a commercial 11e.(2) disposal facility. The review focused on the Department's 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 Texas.

Response:

The review team agreed with the comment and revised the report accordingly.

Comment 2:

Draft Report, 2.1 Technical Staffing and Training, Recommendation 1, Current Status, first paragraph.

The Department consists of four programs ~~including~~ within the Division ~~of~~ for Regulatory Services, which retains the functions of the State's radiation control program. The Department is organized into functional groups rather than into program groups. The Radiation Program Officer is designated as the radiation control program director and provides a coordinating role among the functional groups.

Response:

The review team incorporated State's comments with the following changes:

The ~~Department~~ radiation control program, within the Division for Regulatory Services, consists of four units ~~programs including the Division of Regulatory Services, which~~

ENCLOSURE 2

~~retains the functions of the State's radiation control program. The Department is organized by into functional groups rather than into program groups.~~ The Radiation Program Officer is designated as the radiation control program director and provides a coordinating role among the functional groups.

Comment 3:

Draft Report, 2.1 Technical Staffing and Training, Recommendation 1, Current Status, second paragraph.

During the 2005 review, there were seven vacancies in the Department's radioactive materials program (program), including four regional inspectors. At the time of this followup review, all four inspector vacancies and one ~~additional license~~ PSQA reviewer position had been filled. There ~~are~~ is currently ~~three~~ one vacancy~~s~~y in the program. ~~The vacancies include one management position and one administrative assistant position, both in the Quality Assurance Unit. Due to a full-time equivalent (FTE) cap that has been imposed, and additional budget issues, these two positions were frozen.~~ A civil engineer in the Technical Assessments Group left the program in October 2006, and the position was posted almost immediately. At the time of the review, no applications have been received. The review team concluded that, despite these vacancies, and the fact that all inspector and license reviewer vacancies have been filled, the program's regulatory activities will not be adversely affected.

Response:

The review team discussed with the Department that the management and administrative assistant positions mentioned in the draft report were not assigned to the radioactive materials program. The text will be modified to read as follows:

During the 2005 review, there were seven vacancies in the Department's radioactive materials program (program), including four regional inspectors. At the time of this followup review, all four inspector vacancies and one Policy, Standard and Quality Assurance reviewer position had been filled. There is currently one vacancy in the program. A civil engineer in the Technical Assessments Group left the program in October 2006, and the position was posted almost immediately. At the time of the review, no applications have been received. The review team concluded that all inspector and license reviewer vacancies have been filled, and the program's regulatory activities will not be adversely affected by the single vacancy.

Comment 4:

Draft Report, 2.1 Technical Staffing and Training, Recommendation 1, Current Status, fourth paragraph, seventh sentence.

~~An electronic database spreadsheet~~ spreadsheet is used to track training already attended and is used to schedule for upcoming training.

Response:

The review team agreed with the comment and revised the report accordingly.

Comment 5:

Draft Report, 2.2 Status of Materials Inspection Program. The Department offered the following comment:

As of January 11, 2007, DSHS has a total of 15 routine inspections and 5 initial inspections that are presently overdue or overdue by the end of the month. All have been assigned to staff for inspection by the end of the January 2007.

Response:

The review team appreciates the updated information on the status of the overdue inspections. The review team did not revise the report as a result of this comment since the report, as written, reflects the status of the program during the on-site portion of the review.

Comment 6:

Draft Report, 2.3 Technical Quality of Inspections, Recommendation 3, Current Status, first paragraph.

The review team found that during the review period all scheduled, annual inspector accompaniments have been conducted for Calendar Year 2006 ~~with one exception~~. The last accompaniment is scheduled to be completed by the middle of December. In addition, the Department has implemented a procedure to ensure that accompaniments will be conducted annually. Based on the Department's actions and improvements made to address Recommendation 3 of the 2005 review, the review team recommends that this recommendation be closed.

Response:

The review team appreciates the updated information on inspector accompaniments. The review team did not revise the report as a result of this comment since the report, as written, reflects the status of the program during the on-site portion of the review.

Comment 7:

Draft Report, 2.3 Technical Quality of Inspections, Recommendation 4, Current Status, first paragraph, first sentence.

In July 2006, the Department ~~hosted the NRC's A~~ conducted training on Inspecting for Performance - Materials Version" training course.

Response:

The review team incorporated State's comments with the following changes:

In July 2006, the Department ~~hosted the NRC's A~~ conducted training on performance-based inspection techniques. ~~Inspecting for Performance - Materials Version"~~ training course.

Comment 8:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, third paragraph.

~~The review team found a total of 49 incidents reported to the NRC's contractor responsible for maintaining NMED during the review period. These incidents were evaluated for timeliness in reporting. Three out of 20 incidents requiring immediate notification were reported in excess of 10 days. Nine out of 10 incidents requiring 24-hour notification exceeded 24 hours, including two cases exceeding 300 days. Two out of four incidents requiring 5-day notification exceeded five days, and five out of 15 incidents requiring 30-day notification exceeded 30 days, including one reported in excess of 300 days.~~

The Department proposes that the above paragraph be deleted and offers the following comments:

The information provided by the review team during the close out briefing on Thursday, November 16, 2006 has been reviewed by Incident Investigation Program (IIP) staff. The information identified 49 event reports from the NMED database that were included in the review and included reviewer's notes on the review and specific comments regarding individual event reports and allegations. Four of these were under other agreement states' jurisdiction. Our response to items 1-4 follow:

1. The report states that there were 3 immediately reportable events exceeding 10 days. Our review found that 2 should be considered late.
2. In addition, our review indicates only 2 events meet the 24 hour reporting criteria in SA 300.
3. We identified 3 events requiring a 5 day report and
4. Twenty three events required 30 day notification.

Although we agree that 4 reports were late, we strongly disagree that 19 of 45 events were reported late as stated in this report. This portion of the review should be revisited in order to gain a better informed determination of incident and allegation status within the Texas program.

Documentation of our timeliness in reporting can be found in e-mail records (see attached). These records, as well as records on NRC's web site, indicate that a total of 4 reports were late for all reporting categories.

It should be noted that the NMED database does not reflect the actual dates and times of notification made by the state to NRC or to NMED. It shows instead, the dates of the event, the date the event was reported to the state and the dates that data was entered by the contractor into the database.

These records also demonstrate that event data was entered in NMED by NRC's contractor as much as three weeks after being submitted. One example is item no. 050742. The reviewer's notes indicate the report was 5 days late. The state received the report on 11/04/05 and reported it to NRC the same day. There was a difference of opinion regarding required reporting times for some events resulting in the Review Team labeling those as "late" reports.

Response:

The review team appreciates the additional information supplied by the Department. Timeliness of reporting incidents to NRC was identified in both the 2001 and 2005 IMPEP reviews. Reviews of selected files did not readily contain either dates or copies of the notifications made to NRC. The review team held discussions during the on-site review and was unable to obtain additional information at that time. The review team used information in NMED as a means of estimating potential late reports. The review team also sought additional information on timeliness against the NMED information and discussed, with both management and available reviewers, the advantages of maintaining notification information within each file. The review team is aware that the NMED database does not contain the actual dates and times of notification made by the State to the NRC and did factor this into the consideration of late reports when the data was not readily available. The review team does not agree to revise the paragraph at this time and is prepared to discuss the issue and Texas' comments with the MRB during the MRB meeting. There was no revision to the report based on this comment.

Comment 9:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, third paragraph. The Department offered the following comment:

Another issue found during our review of this report involves the reporting of leaking source events to NMED. It appears NMED doesn't provide the contractor an accurate event category selection for leaking sources. Incident Investigation Program staff were told by the contractor that another event description is selected which states that the event involved equipment that failed to function as designed. In the NMED record, this forces the reporting criteria to a 24 hour report. This category shift is inconsistent with reporting criteria in SA 300. We can provide detailed information regarding this if necessary.

Response:

The review team appreciates the comment and is investigating the concern. The review team will update the MRB on the status of its investigation and will discuss the need to revise SA-300 if revisions are necessary.

Comment 10:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, fourth paragraph. The Department offered the following comment:

The events in Appendix G were reviewed and IIP staff agreed with the reviewer in part. Eight of the events required additional effort to complete. Information contained in 5 of the records appears to have been misunderstood and could have been explained by IIP staff if time had allowed. In some cases, no investigation was required. In others there was no immediate or 24 hour reporting requirement. In one instance the file record was complete and all necessary information was included.

Response:

The review team appreciates the comment and would have considered revising the appendix, if specific factual information had been provided for the casework in question. No specific mark-ups were provided. There was no revision to the Appendix G casework based on this comment.

Comment 11:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, sixth paragraph.

~~The review team was provided a draft copy of the "Incident Investigation Program Procedure," dated October 10, 2006. The procedure provides detailed guidance on the administrative duties of logging and filing the incident and preparing the summary information for quarterly publication. Much less guidance is provided in reporting, investigating, and closing the event. The procedure identifies several possession changes of the data (reviewer, inspector, investigator, quality assurance reviewer) each having responsibility for a piece of the overall event. Supervisory oversight appears to be missing in the critical areas of NRC/NMED reporting to ensure the correct reporting criteria is used, a proper investigation is conducted, and closure information and documentation is complete so the event or allegation could be closed.~~

The Department proposes that the above paragraph be deleted and offers the following comments:

This document was provided to the review team to demonstrate that a review of our processes is being conducted. It was provided only to demonstrate that the program is continuing to review and make necessary changes to internal processes. It is not complete and has not completed internal review. Furthermore, an IMPEP review should focus on actual performance rather than procedures. This entire paragraph should be stricken from the final report.

Response:

The review team does not agree to delete the paragraph at this time and is prepared to discuss the issue and Texas' comments with the MRB during the MRB meeting. There was no revision to the report based on this comment.

Comment 12:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, seventh paragraph. The Department offered the following comments:

Throughout Section 2.4 of this document, specific comments are made as to the lack of timeliness of event reporting and updating NMED records. Other comments are that program files are incomplete or have been closed prematurely. The review of this draft revealed some areas of concern about the conclusions drawn by the review team. The last sentence above indicates the review team noted significant improvements. It would be helpful if NRC would clearly state the improvements so that, in or efforts to correct deficiencies, we don't undo improvements.

The following observations should be considered:

1. There are improvements to make in completing incident/complaint files as well as NMED records,
2. There appears to be a misunderstanding on the part of the Review Team regarding dates of event reports,
3. The Review Team needed more time to assess the selected incidents in Appendix G with the appropriate member of the Incident Investigation Program in order to properly resolve questions about the files and
4. There is strong disagreement between the program review of the files and the review team's findings.

This review does not seem to support the Review Team's conclusion that the program remain on heightened oversight. The findings regarding NMED records do not impact on public health and safety. In addition, the lack of discussion regarding specific incident file deficiencies resulted in incorrect conclusions regarding the technical quality of the investigations.

Response:

The review team agrees that additional time would have assisted both the review team and the Texas staff in resolving concerns about timeliness of incident reports. The review team notes that the recommendation that the program remain on heightened oversight is based on the performance for two indicators, Status of Materials Inspections and the Technical Quality of Incident and Allegation Activities. The review team does not agree to revise the recommendation at this time and is prepared to discuss the issue and Texas' position with the MRB during the MRB meeting. There was no revision to the report based on this comment.

Comment 13:

Draft Report, 2.4 Technical Quality of Incidents and Allegation Activities, Recommendation 5, Current Status, seventh paragraph. The Department offered the following comments:

We recommended that, for future IMPEP reviews, the Review Team should share the results of its NMED queries 30 days in advance of the review dates. The purpose would be to allow the state to review and provide NRC with it's analysis of this NMED data. We believe this will allow more meaningful discussion of the records and provide better opportunity to resolve review team questions during the on site portions of the review. Furthermore, we volunteer to be interviewed by the NRC's internal auditor in the on-going audit of the NMED program.

Response:

Since IMPEP is an evolving process, the review team appreciates Texas' suggestion on providing the results of the NMED queries to allow the State to provide NRC its analysis of this NMED data; however, the review team disagrees with this suggestion. The same information used by review teams is already available to the States through NMED. The review team believes that States should consider conducting their own audits of NMED information in

preparation for IMPEP reviews. This would allow the State under review to be prepared to provide additional information to the review team and to potentially clarify any issues. There was no revision to the report based on this comment.

Comment 14:

Draft Report, Appendix D, Department Periodic Meeting Summary, 1.b., Current Status, first paragraph.

The Department added three additional positions to the uranium recovery program in the Technical Assessments Group. Although all three positions were filled, a vacancy (**civil engineer**) occurred which has not yet been filled. The position is presently **was** posted but not filled due to **a lack of applicants and** an issue with the interpretation of the authorization with the Office of the Comptroller. Fees collected, which would cover the position, are put in the general fund and must be appropriated for the Department.

Response:

The review team agreed with the comment and revised the report accordingly.

Comment 15:

Draft Report, Appendix D, Department Periodic Meeting Summary, 1.c., Current Status, first paragraph.

The Department is continuing to work on the necessary supporting documentation. However, with the loss of ~~the new hire~~ **one of the civil engineer positions**, the work effort cannot continue on the previously anticipated schedule.

Response:

The review team agreed with the comment and revised the report accordingly.

Agenda for Management Review Board Meeting
February 2, 2007, 10:00 a.m. - 12:00 p.m. (EST), OWFN 3-B4

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 Mike Broderick from Oklahoma.)
3. Consideration of the Texas IMPEP Report.
 - A. Presentation of Findings Regarding Texas Program and Discussion.
 - Technical Staffing and Training
 - Status of Materials Inspection Program
 - Technical Quality of Inspections
 - Technical Quality of Incident and Allegation Activities
 - B. Presentation of the periodic meeting summaries.
 - Texas Department of State Health Services
 - Texas Commission on Environmental Quality
 - C. IMPEP Team Recommendations.
 - Adequacy and Compatibility Ratings
 - Recommendation for Next IMPEP Review
 - D. MRB Consultation/Comments on Issuance of Report.
4. Request for comments from Texas representatives, OAS Liaison and State IMPEP Team Member. (State IMPEP team member is James Harris of Kansas.)
5. Adjournment.

Invitees: Martin Virgilio, DEDMRT
 Karen Cyr, OGC
 Charles Miller, FSME
 Samuel Collins, RI
 Mike Broderick, OK
 Richard Ratliff, TX
 Janet Schlueter, FSME
 Scott Moore, FSME
 Patricia Rathbun, FSME

Linda McLean, RIV
Kathleen Schneider, FSME
Osiris Siurano, FSME
Tomas Herrera, FSME
Kathryn Perkins, TX
Susan Jablonski, TX
Aaron McCraw, FSME
Andrea Kock, OEDO
Kim Karcagi, FSME

ENCLOSURE 3