

June 4, 2008

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

George C. Pangburn, Deputy Director
Office of Federal and State Materials
and Environmental Management Programs

Karen D. Cyr, General Counsel

Elmo E. Collins
Regional Administrator, Region IV

FROM: Kim K. Lukes, Health Physicist */RA By Aaron T. McCraw for/*
State Agreements and Industrial Safety Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: JUNE 19, 2008 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of periodic meetings with two Agreement State agencies has been scheduled for **Thursday, June 19, 2008, from 1:30 p.m. to 3:00 p.m. EST, in Two White Flint North, Room T-8-C5**. The periodic meeting summary reports for Colorado and North Dakota will be discussed. The meeting summary for each of the Agreement State agencies is enclosed (Enclosures 1 and 2).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 3).

If you have any questions or need additional information, please feel free to contact me at (301) 415-6701.

Enclosures:
As stated

cc: Jared Thompson, AR
Organization of Agreement States
Liaison to the MRB

Distribution: DCD (SP01)
 DMSSA RF
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 GBaughman, CO
 TO'Clair, ND
 DHarman, ND

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OFFICE	FSME/DMSSA		FSME/DMSSA						
NAME	KKLukes:kk (ATMcCraw for)		ATMcCraw						
DATE	6/4/08		6/4/08						

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

March 28, 2008

Gary W. Baughman, P.E., Director
Hazardous Materials and Waste
Management Division
Department of Public Health
and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Dear Mr. Baughman:

A periodic meeting with your State was held on March 4, 2008. The purpose of this meeting was to review and discuss the status of the Colorado Agreement State Program. The NRC was represented by Mr. William Rautzen from NRC's Office of Federal and State Materials and Environmental Management Programs, and me. Topics and issues of importance discussed at the meeting included a detailed discussion of recommendations from the 2006 IMPEP review and the status of your materials and uranium recovery programs.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail RRE@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson

Enclosure:
Periodic Meeting Summary for Colorado

(cc listing on next page)

ENCLOSURE 1

Colorado Department of Health

- 2 -

cc w/enclosure:

Mr. Joseph S. Vranka, P.E., Manager
Radiation Control Program
Hazardous Materials and Waste
Management Division
Department of Public Health
and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Mr. Steve Tarlton, Unit Leader
Radiation Management Unit
Hazardous Materials and Waste
Management Division
Department of Public Health
and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR COLORADO

DATE OF MEETING: MARCH 4, 2008

NRC Attendees	Colorado Attendees
Randy Erickson, RSAO	Gary W. Baughman, P.E., Director
William Rautzen, FSME	Joseph S. Vranka, P.E., Manager
	Steve Tarlton, Unit Leader
	Ed Stroud, Health Physicist
	James Jarvis, Health Physicist
	Jennifer Opila, Health Physicist

DISCUSSION:

The Colorado Agreement State program (the Program) is administered by the Radiation Management Program consisting of two units, the Radioactive Materials Unit and the X-Ray / Mammography Unit. The Program, which administers the licensing and inspection portion of the Agreement State Program, is under the direct supervision of the Unit Leader. The Program is a part of the Division, which is one of several environmental programs located within the Department of Public Health and Environment. At the time of the review, the Colorado program regulated approximately 350 specific licenses.

The previous IMPEP review was conducted the week of March 13-17, 2006. At the conclusion of the review, the team recommended that Colorado's performance for all performance indicators be found satisfactory. The review team made four recommendations regarding the performance of the Program. Additionally, the review team recommended, and on June 13, 2006, the Management Review Board (MRB) agreed, that the Colorado Agreement State Program was adequate to protect public health and safety and compatible with NRC's program.

The proposed status for each of the recommendations from the 2006 Colorado final IMPEP report is summarized below.

- The review team recommends the Program conduct reciprocity inspections in accordance with the criteria outlined in NRC MC 1220.

Previous Status: For the period 2002 - 2005, the Program conducted 10 inspections of the 72 candidate reciprocity licensees (13 percent) who worked in the State during this period. The review team determined that the Program did not meet NRC's criteria of inspecting 20 percent of candidate licensees, as prescribed in NRC MC 1220, operating under reciprocity for the period 2002 - 2005.

Current Status: The Program reported that for the remainder of 2006, they did not meet NRC's criteria of inspecting 20 percent of candidate licensees; they again fell short of the criteria in 2007 but did get closer to the goal; however, they anticipate meeting the criteria for 2008. Program managers stated that during the previous two years three out

of nine staff members retired or otherwise left the Program. Of the six remaining staff members, not all were capable of performing reciprocity inspections and newly hired staff is still training and in most cases they are not qualified to perform reciprocity inspections. This has placed a hardship on the Program and made it difficult to inspect 20 percent of candidate licensees. The Program noted Colorado winter weather as another factor making it difficult to meet the reciprocity inspection criteria. For months during the winter, snow and road conditions often make it difficult if not impossible at times to reach more remote areas of the state where oil and gas exploration is ongoing. These areas tend to be where much of the reciprocity work takes place. However, the Program indicated that the staff newly hired staff becomes more experienced, they should have little difficulty meeting the reciprocity inspection criteria.

This recommendation remains open and should be evaluated at the next IMPEP review.

- The review team recommends that the Program develop and implement a process for issuance of provisional licenses in a timely manner as well as timely termination of these licenses.

Previous Status: The review team noted documentation shortfalls in the provisional licensing process. Issuance of a provisional license mandates that a facility provide a written plan for identification, characterization, and disposal of radioactive material within 30 days from the issuance of a provisional license; and store radioactive material in a manner that will preclude access and use by unauthorized personnel. The review team noted that in 2004 and 2005 there were multiple instances pertaining to approximately four facilities where provisional licenses should have been issued but were not.

Current Status: In response to this recommendation the Program established an emergency response duty officer position that is rotated among the staff. The assigned staff member carries a cell phone that can be reached 24 hours per day. In addition, provisional license training was conducted in the summer of 2007 to ensure the staff fully understood how provisional licenses should be handled. In summary, when the Program receives a call where a radioactive source has been located and the owner is unknown, the staff member is responsible for evaluation of the circumstances and should determine if issuance of a provisional license is warranted. If that determination is made, a provisional license is then issued to the individual or company who currently possesses the material. The Unit Leader is then notified. The Program follows-up with the individual to ensure that the source is handled and disposed of safely. The provisional license is then terminated. Emergency response procedures are currently being developed which will include a section on how handle provisional licenses.

This recommendation should be verified and closed at the next IMPEP review.

- The review team recommends that the Program add a section to the two-page reviewer checklist to facilitate the appropriate, thorough and consistent review of license decommissioning and termination items.

Previous Status: The review team found that actions involving terminating licenses had some documentation shortfalls. It was noted that in the three termination actions reviewed, two cases should have included more thorough documentation.

Current Status: The Program reported that they have not yet developed procedures or added a section to their licensing reviewer checklist to ensure the thorough and consistent review of license decommissioning and termination items. While the Program has not yet documented the process, they have developed a practice to ensure that all terminations are properly reviewed to ensure thorough processing. One of the senior Health Physicists has been assigned the task of reviewing all terminations to ensure they remain consistent and cover all the necessary items. The Program plans to revise the checklist to add this process. This recommendation remains open and should be evaluated at the next IMPEP review.

- The review team recommends that the Program transfer six sealed source and device certificates to inactive status, because their original manufacturers are no longer in business.

Previous Status: The review team noted from the IMPEP questionnaire that there are six licensees that have terminated licenses, but still have active SS&D certificates. The guidance in Section 13.4 of NUREG-1556, Vol. 3, directs the regulatory authority to transfer a registration certificate to inactive status if it is known that the registration certificate holder is out of business.

Current Status: In response to this recommendation the Program performed a thorough review of all SS&D certificates issued by Colorado. They confirmed the six active certificates associated with licenses that had been terminated. They also identified two additional certificates that should have been moved to inactive status. The Program is currently working to move these additional certificates to inactive status. Following the 2006 review, the Program established a fee structure for SS&D certificates. This has prompted licensees to self identify SS&D certificates that are out of date and to terminate them. This recommendation remains open and should be evaluated at the next IMPEP review.

Other topics covered at the meeting included.

Program Strengths: The Colorado Program is a very busy program that has experienced staff losses since the 2006 IMPEP review. Program management has worked to ensure that a balance is achieved across the program. Emphasis is placed on higher risk activities and the staff is focusing on them in an effort to maintain health and safety. Program management has managed available staff well, ensuring that incident response and emergency response activities are not neglected. While the Program has lost several staff members, they have been successful in hiring highly experienced and motivated individuals from industry bolstering the staff's already broad knowledge base.

Staff members work well together and provide a high level of customer service to their licensees. They work together to make team decisions concerning technical matters and have regular staff meetings.

Program Weaknesses: The Program identified areas where weaknesses have existed and many involve a long term lack of change within the Program. The Unit Leader noted that some of the senior staff who recently left the Program had operated the licensing and inspection programs for many years and saw no reason to change what they believed was already working. Those vacancies provided opportunities for junior staff with fresh ideas to take over those positions and identify areas for improvement. Staff is now working to create or improve existing procedures, restructuring parts of the licensing and inspection programs, improving documentation, and have created new licensing templates. A lead position has been created for the inspection program and one will soon be created for the licensing program. A duty officer assignment has been created and additional emergency response procedures are being created. The Program also noted that the newer staff places a larger burden on the more experienced staff members, but as their experience levels increase the workload is expected to level out.

Staffing and training:

The Program has a total of 11 full-time staff members within the Radioactive Materials Unit, of which nine are dedicated to the radioactive materials licensing, inspection and compliance programs; sealed source and device programs, and the uranium recovery program. The remaining two are managers. Currently the Program has no vacant technical positions, but one individual plans to retire soon.

Program reorganizations:

The Program has not experienced any program reorganizations since the previous IMPEP review and none are expected; however, they now have a new Governor in place. The new Governor appointed a new Executive Director. The Program also has a new Director of Environmental Programs.

Changes in Program budget/funding.

The Program has not experienced problems with budgeting or funding. The Program is fee funded, has a dedicated fund, and is supported by regular fee increases that are approved by the Colorado Board of Health. The most recent fee increase was 13 percent and occurred in 2007. The Program is constrained by a legislative cap which restricts the Program from carrying over more than 16 percent of their budget from one year to the next.

Materials Inspection Program:

The Program reported that they currently have no overdue inspections. Routine inspections are generally performed by the due date, but because of staff losses,

occasionally that goal is not met. Initial inspections are performed within 12 months of issuance. They have experienced difficulty in performing reciprocity inspections as noted above. They are currently working to meet the goal of performing inspections on at least 20 percent of candidate reciprocity licensees. The Program initially identified 30 licensees who were required to implement Increased Controls. The Program reported that all Increased Controls inspections were performed within the first year.

Regulations and Legislative changes:

The Program's rules and regulations are mostly up to date. They will be addressing comments from previous regulation reviews, and are working to address regulations that are due for adoption in the near future. The Program's fingerprinting license condition along with a regulation package addressing comments from a previous regulation review, are currently under review by NRC staff.

Event reporting, including follow-up and closure information in NMED.

The Program reported that all NMED information is up to date.

Response to incidents and allegations.

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their affect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program Manager has placed a high emphasis on maintaining an effective response to incidents and allegations.

Status of allegations and concerns referred by the NRC for action.

One allegation was referred by NRC to the Program since the 2006 review. That allegation is occurred in 2008 and is still being worked by the Program.

Significant events and generic implications.

The Program reported three significant enforcement actions in 2006, eight significant enforcement actions in 2007, and three significant enforcement actions to date in 2008. Most recently, one significant event involved the failure to lock and secure an unattended radiography truck containing a 75 curie iridium-192 source. The keys were left in the unattended vehicle's ignition for up to six hours. This was in violation of both Colorado and Increased Controls requirements. Orders against the individual are pending.

Current State Initiatives.

The Program indicated that they are in the process of developing licensing templates to assist license reviewers be more consistent in their approach to license development. They have developed TENORM guidance, are developing implementation guides, and continue working to enhance their generally licensed device program.

Emerging Technologies.

The Program identified the increased use of yttrium-90 microspheres as a technology they are faced with. The Program is developing training requirements for the use of this technology and enhancing their inspection program to better inspect their use.

Large, complicated, or unusual authorizations for use of radioactive materials.

The Program reported an increased interest in uranium mining and the Program anticipates a new uranium mill application from Energy Fuels in the fall of 2008 or in early

2009. The Program also expects an application from PowerTech in February 2009. They are exploring the possibility of in-situ recovery of uranium.

The Program also noted that their first RCRA hazardous waste facility is now licensed to accept NORM and TENORM materials.

State's mechanisms to evaluate performance.

The Program has a master database that they use to track most programmatic activities. The Program Manager also performs accompaniments of the inspection staff to ensure they are performing at the expected level.

Current NRC initiatives:

NRC staff discussed ongoing initiatives with the Program. These included pre-licensing guidance, fingerprint orders, national source tracking, web based licensing, generally licensed devices, and the issues associated with tritium exit signs.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held in two years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

March 27, 2008

Terry O'Clair, Director
Division of Air Quality
North Dakota Department
of Health
918 E. Divide Avenue, 2nd Floor
Bismarck, North Dakota 58501-1947

Dear Mr. O'Clair:

A periodic meeting with your State was held on March 18, 2008. The purpose of this meeting was to review and discuss the status of the North Dakota Agreement State Program. The NRC was represented by Mr. Leonard Wert from NRC's Region IV office, Mr. William Rautzen from NRC's Office of Federal and State Materials and Environmental Management Programs, and me. Topics and issues of importance discussed at the meeting included a detailed discussion of your ongoing recovery from the loss of key senior health physics personnel, and the assistance provided to your program by members of the Minnesota Radiation Control Program.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail RRE@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson

Enclosure:
Periodic Meeting Summary for North Dakota

ENCLOSURE 2

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NORTH DAKOTA

DATE OF MEETING: MARCH 18, 2008

NRC Attendees	North Dakota Attendees
Randy Erickson, RSAO	Terry O'Clair, Director
Leonard Wert, Director	Daniel Harman, Program Manager
William Rautzen, FSME	Chris Schmaltz, Environmental Scientist
	Louise Roehrich, Environmental Scientist

DISCUSSION:

The North Dakota Agreement State program (the Program) is administered by the Division of Air Quality (the Division) within the Environmental Health Section of the North Dakota Department of Health. The Program, which administers the licensing and inspection portion of the Agreement State Program, is under the supervision of the Manager of the Radiation and Indoor Air programs. The Program is a part of the Division, which is one of several environmental programs located within the North Dakota Department of Health. At the time of the review, the North Dakota program regulated approximately 65 specific licenses.

The previous IMPEP review was conducted the week of April 17-19, 2007. At the conclusion of the review, the team recommended that North Dakota's performance be found satisfactory but needs improvement, for the indicator, Status of the Material's Inspection Program, and satisfactory for all remaining performance indicators reviewed. The review team made no recommendations regarding the performance of the North Dakota Agreement State Program. Therefore the review team recommended, and on June 25, 2007, the Management Review Board (MRB) agreed, that the North Dakota Agreement State Program was adequate to protect public health and safety and compatible with NRC's program. Additionally, the review team recommended and the MRB agreed that a periodic meeting be held with the Program in one year.

Other topics covered at the meeting included.

Program Strengths: Following the 2007 IMPEP review, the Program lost the senior Health Physicist and the Program Manager in rapid succession. The loss of these staff members presented a hardship for the Program because the remaining health physicist had limited licensing and inspection experience. The Program was able to hire a new Program Manager and Health Physicist; however, having no radioactive materials regulatory experience, these individuals were unable to immediately contribute significantly to the program. While the Program worked to hire staff, the remaining health physicist performed basic licensing and inspection activities and the Program was able to maintain health and safety. The lack of a qualified individual capable of training the staff in licensing and inspection activities was also a compounding problem for the Program.

Shortly after the Program Manager and the senior Health Physicist left the program, the Minnesota Radiation Control Program (Minnesota) offered assistance to the Program to both train staff and perform inspections of North Dakota licensees. The State accepted Minnesota's offer and worked with them on an expedited training schedule. The plan was to provide interim qualification so the Program's inspectors would be able to independently perform inspections. Minnesota traveled to North Dakota to perform inspections and train staff in program areas licensed by the Program. North Dakota also traveled to Minnesota to accompany their inspectors as they performed inspections. As North Dakota inspectors became proficient with various types of licensed activities, Minnesota signed the inspectors off as being competent to independently perform that type of inspection. This process is ongoing and Minnesota continues to assist the North Dakota program.

When faced with the adversity of unexpected staff losses, North Dakota worked cooperatively with Minnesota to train staff and to keep from falling significantly behind in the inspection program. The Program was also able to keep up with licensing actions.

Program Weaknesses: The Program cited their lack of experience, the need for training, and a steep learning curve as weaknesses they will face in the near future.

Staffing and training:

The Program has a total of 3 positions when fully staffed. This includes the Program Manager and two Health Physicists. Since the Program Manager and senior Health Physicist positions were filled, the program has remained stable. The Program does not anticipate any upcoming staff departures.

Program reorganizations:

The Program has not experienced any program reorganizations. None are expected.

Changes in Program budget/funding.

The Program has not experienced any budget or funding changes since the 2007 review.

Materials Inspection Program:

During the 2007 IMPEP review, it was noted that the inspection program generally performed most inspections between the due date and the overdue date. The review team cautioned the Program Manager and the Division Director that if the Program lost staff while operating in this manner, it could result in the Program failing to meet their inspection timeliness goals. Shortly after the review, both the Program Manager and senior Health Physicist left the program. The Division Director hired replacement staff, and with the help provided by the Minnesota Program, the Program was able to keep from falling seriously behind. The Program reported that since the 2007 IMPEP review,

only three inspections had been performed overdue, with one being a licensee who worked out of state and infrequently returned to North Dakota. At the time of the Periodic Meeting, no inspections were overdue. The current Program Manager indicated that the Program is currently working to eliminate the practice of routinely performing inspections between the due date and the overdue date.

The Program initially identified eight licensees who were required to implement Increased Controls. The Program reported that all Priority 1 licensees had been inspected within the first year and that the remaining inspections have either been performed or will be completed by the end of 2008.

The Program continues to complete as many reciprocity inspections as possible. Competing priorities including performing timely routine inspections, attending out of state training courses, and working on licensing actions frequently cause the Program to decide which reciprocity licensees absolutely need to be inspected. Additionally, reciprocity licensees frequently work in the more populated areas of the State. These are generally located near the east and western borders of the State, far from the location of their office. The Program is committed to performing 20 percent of candidate reciprocity licensees.

Regulations and Legislative changes:

There have been no legislative changes since the 2007 review that have affected the Program.

The Program has decided to adopt NRC regulations by reference and is currently working to separate the X-ray regulations from the currently combined regulations. The Program Manager anticipates the Program will complete this task by the end of July 2008.

Event reporting, including follow-up and closure information in NMED.

Since the 2007 IMPEP review the Program had one event which required review and reporting to NMED. All NMED information is currently up to date.

Response to incidents and allegations.

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are reviewed for their affect on public health and safety and staff is dispatched to perform onsite investigations when necessary. The Program Manager has placed a high emphasis on maintaining an effective response to incidents and allegations.

Status of allegations and concerns referred by the NRC for action.

No allegations were referred by NRC to the Program since the 2007 review.

Significant events and generic implications.

Nothing to report.

Current State Initiatives.

Nothing to report.

Emerging Technologies.

Nothing to report.

Large, complicated, or unusual authorizations for use of radioactive materials.

Nothing to report.

State's mechanisms to evaluate performance.

The Program has a master database that they use to track inspections and licensing activities.

The Program Manager performs accompaniments of the inspection staff to ensure they are performing at the expected level. Staff accompaniments are also being performed by Minnesota.

Current NRC initiatives.

NRC staff discussed ongoing initiatives with the Program. These included pre-licensing guidance, fingerprint orders, national source tracking, web based licensing, generally licensed devices, and the issues associated with tritium exit signs.

Summary.

While faced with an unexpected loss of staff, the North Dakota Program has continued to effectively maintain health and safety, and keep the Program viable. It should be noted that the Minnesota Program has played a large role in North Dakota's success.

Schedule for the next IMPEP review.

It is recommended that another Periodic Meeting be held with the State in 18 months with the next IMPEP review to be held in three years.

**Agenda for Management Review Board Meeting
June 19, 2008, 1:30 p.m. - 3:00 p.m. EST, T8-C5**

1. Announcement of Public Meeting to all attendees and request for identification of any members of the public participating in this meeting.
2. MRB Chair convenes meeting. Introduction of MRB members, Agreement State representatives, and other participants. (OAS Liaison is Jared Thompson of Arkansas.)
3. Discussion of Periodic Meetings:
 - a. Colorado (March 4, 2008) - ML080910526 – Erickson/Rautzen
 - b. North Dakota (March 18, 2008) - ML080870131 – Erickson/Wert/Rautzen
4. Establishment of Precedents/Lessons Learned
5. Adjournment

Invitees: Martin Virgilio, OEDO
George Pangburn, FSME
Karen Cyr, OGC
Elmo Collins, Region IV
Jared Thompson, AR
Duncan White, FSME
Stephen Campbell, OEDO
Randy Erickson, Region IV
Arthur Howell, Region IV
Charles Cain, Region IV

Dennis Sollenberger
William Rautzen, FSME
Kim Lukes, FSME
Aaron McCraw, FSME
Joseph Vranka, CO
Steve Tarlton, CO
Gary Baughman, CO
Terry O'Clair, ND
Daniel Harman, ND