

July 18, 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

Karen D. Cyr
General Counsel

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

Steven A. Reynolds, Director
Division of Nuclear Materials Safety
Region III

FROM: Kim K. Lukes, Project Manager **/RA/**
State Agreements and Industrial Safety Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: MINUTES: JUNE 23, 2008, CALIFORNIA MANAGEMENT
REVIEW BOARD (MRB) MEETING

Enclosed are the minutes of the MRB meeting held on June 23, 2008. If you have comments or questions, please contact me at (301) 415-6701.

Enclosure: Minutes of the Management
Review Board Meeting

cc: Bonita Sorensen, Chief Deputy Director
of Policy and Programs
California Department of Public Health

Gary W. Butner, Chief
California Radiologic Health Branch

James D. Boyd, Commissioner
California Energy Commission

William A. Passetti, Florida
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

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MINUTES: MANAGEMENT REVIEW BOARD MEETING OF JUNE 23, 2008

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

Martin Virgilio, MRB Chair, OEDO	Patrice Bubar, FSME
Charles Miller, MRB Member, FSME	Duncan White, FSME
Karen Cyr, MRB Member, OGC	Monica Orendi, FSME
Dennis Sollenberger, Team Leader, FSME	R. K. Wild, OIG
Joseph DeCicco, Team Member, FSME	Eric Rivera, OIG
John Jankovich, Team Member, FSME	Rebecca Ryan, OIG
Gary Butner, CA	Joan Olmstead, OGC
Gary DeMoss, OEDO	Kim Lukes, FSME
Jim Luehman, FSME	Leira Cuadrado, FSME
Robert Lewis, FSME	

By Videoconference:

Steven Reynolds, MRB Member, Region III	Linda McLean, Region IV
Randy Erickson, Team Member, Region IV	Chuck Cain, Region IV

By Teleconference:

William Passetti, OAS Liaison, FL	Robert Greger, CA
Orysia Masnyk Bailey, Team Member, Region I	Barbara Hamrick, CA
John Fassel, CA	Phillip Scott, CA
Tony Agurto, CA	

- 1. Convention.** Ms. Kim Lukes convened the meeting at 1:05 p.m. She noted that this Management Review Board (MRB) meeting was open to the public; however, no members of the public participated in this meeting. She then transferred the lead to Mr. Martin Virgilio, Chair of the MRB. Introductions of the attendees were conducted.
- 2. California IMPEP Review.** Mr. Dennis Sollenberger, team leader, led the presentation of the California Integrated Materials Performance Evaluation Program (IMPEP) review results to the MRB. He summarized the review and noted the findings. The on-site review was conducted by a review team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of New York during the period of March 31 – April 4, 2008. Representatives from the NRC's Office of Investigations also attended the review as observers of the process. A draft report was issued to the State for factual comment on May 1, 2008. California responded on May 29, 2008, by letter from Mr. Gary W. Butner, Acting Branch Chief, Radiologic Health Branch. Based on the response, the State had clarifying comments, most of which were incorporated into the proposed final IMPEP report.

Mr. Sollenberger noted that during the 2006 follow-up IMPEP review, the review team kept open four recommendations from previous reviews. After this IMPEP review, the review team recommended to close three of the four existing recommendations. Mr. Steven Reynolds questioned what actions had taken place between the 2004 IMPEP review and the 2006 follow-up IMPEP review in regards to addressing the

recommendation about the Branch establishing and implementing a system to track incident and allegation investigations since the recommendation remained open following the 2004 IMPEP review. Mr. Sollenberger responded that the recommendation remained open because typically more time is needed in order to observe a long enough period of performance to justify closing the recommendation.

Common Performance Indicators. Mr. Joseph DeCicco presented the findings regarding the common performance indicator, Technical Staffing and Training. His presentation corresponded to Section 3.1 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory" and made no recommendations. Dr. Charles Miller questioned if the contract workers in the Los Angeles and San Diego Counties have health physics expertise. Mr. Butner confirmed that they have the expertise and do perform the same type of work that the Branch employees do on a routine basis, such as writing inspection reports and issuing violations for those licensees in their respective counties. Mr. Butner added that the Branch does, however, perform quality assurance checks of contractor products. Ms. Karen Cyr questioned if the hiring process is made a bit easier with the passage of fee packages. Mr. Butner responded that despite the approval of the 2005 fee package, the hiring process is not circumvented in any way. Mr. Butner added that there is always a year lag between the fees being implemented and hiring of new staff. Mr. Butner noted that there is always a continuous recruitment process in place and he does not foresee any issues with staffing in the future. Ms. Cyr also asked clarification as to whether the Branch requests when the Nuclear Medicine Council (Council) meets with Branch managers. Mr. Butner responded that the Branch managers do specifically request when to meet with the Council. The meetings are usually scheduled based on the need for advice on particular issues. Mr. Reynolds questioned if the Branch is aware of any conflict of interest issues with consulting with the Council. Mr. Butner responded that the Branch managers just consult with the Council on certain medical issues. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Randy Erickson presented the findings regarding the common performance indicator, Status of Materials Inspection Program. His presentation corresponded to Section 3.2 of the proposed final IMPEP report. The review team recommended that California's performance with respect to this indicator be found "satisfactory" and made one recommendation. The review team recommended that the State reevaluate its justification for inspecting high dose-rate remote afterloader (HDR) licensees on a 3-year interval and demonstrate that the health, safety, and security of HDR devices are not compromised. Dr. Miller questioned if the review team evaluated any of the inspection files that were completed by the contractors. Mr. Erickson responded that the team reviewed the entire licensing database which is inclusive of those inspection files completed by the contractors. Mr. Butner added that the Branch management performs inspector accompaniments of the contractors. Mr. Reynolds questioned how often HDRs are inspected in the State. Mr. Robert Greger indicated that the Branch will be evaluating the recommendation to make a determination as to whether to change the priority level of HDRs to a Priority 2. Mr. Reynolds also noted that the Branch had to allow some of the routine inspections to go overdue in order to ensure the timely completion of initial Increased Controls (IC) inspections. Mr. Reynolds questioned what the impact will be in the Branch with the continuation of IC inspections. Mr. Greger noted that the initial IC inspections were unique due to the fact that a lot of staff effort was

needed in the beginning. The next round of IC inspections will not require the same level of effort as the first round of inspections, especially since the IC inspections will be performed at the same time as the routine health and safety inspections. Also, the scope of the second round of IC inspections will be limited based on the fact that the inspectors do not need to evaluate every aspect of the IC requirements. The Branch also tried to perform a large percentage of the IC inspections instead of waiting until the three year due date to perform some of the inspections. The Branch was able to catch up on Priority 1, 2, and 3 inspections to have no overdue inspections at the time of the IMPEP review. Mr. William Passeti questioned if the Branch has experienced any significant problems or violations with HDR licensees. Mr. Erickson and Ms. Orysia Masnyk Bailey noted that they did not review files pertaining to HDR licensees. Mr. John Fassel responded that the Branch did observe one incident at a hospital location involving an HDR. The results of this incident did help the NRC in developing a generic communication. Mr. Virgilio suggested that the Branch review national statistics to help the Branch better address the team's recommendation in regards to the HDR issue. Dr. Miller agreed that due to security measures changing over time, it would be beneficial for the Branch to consider nationwide statistics. Dr. Miller noted that it is important to maintain consistent requirements across the nation. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator and agreed with the recommendation.

Ms. Masnyk Bailey presented the findings regarding the common performance indicator, Technical Quality of Inspections. Her presentation corresponded to Section 3.3 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory" and made no recommendations. Mr. Reynolds questioned if the inspections that the Branch announces as part of their practice of allowing one day announcements to increase inspector utilization is considered unannounced inspections. Mr. Greger responded that those inspections are considered unannounced if that are only announced one day in advance. Mr. Reynolds also questioned how well the Branch is meeting its goal of performing 90 percent of its inspections unannounced. Mr. Greger responded that they are meeting their goal. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Sollenberger for Mr. Robert Dansereau presented the findings regarding the common performance indicator, Technical Quality of Licensing Actions. His presentation corresponded to Section 3.4 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory". Dr. Miller questioned what the licensing case load is for the Branch. Mr. Greger responded that the case load varies over time, but has remained pretty steady. Ms. Cyr asked clarification on how many pre-licensing visits the Branch has performed. Mr. Butner responded that two have been performed and that the amount of pre-licensing visits is determined based on the Branch's workload. Mr. Butner noted that with the hiring of two new staff for assistance with IC inspections, those individuals may assist the counties in performing pre-licensing visits. The Branch hopes to perform pre-licensing visits for all new license applicants. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Sollenberger for Mr. Aaron McCraw presented the findings regarding the common performance indicator, Technical Quality of Incident and Allegation Activities. His

presentation corresponded to Section 3.5 of the proposed final IMPEP report. The review team found California's performance with respect to this indicator to be "satisfactory" and made no recommendations. Dr. Miller applauded the State for improving its process for entering incidents and allegations in a timely manner in its tracking system. Dr. Miller questioned if there is anything NRC needs to do in order to improve its process for disseminating allegations to the States. Ms. Lukes indicated that this issue will be discussed at the next Regional State Agreement Officers' meeting. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator.

Non-Common Performance Indicators. Mr. DeCicco presented the findings regarding the non-common performance indicator, Compatibility Requirements. His presentation corresponded to Section 4.1 of the proposed final IMPEP report. The review team found California's performance to be "unsatisfactory" and recommended that the recommendation from the 2006 follow-up IMPEP review remain open. The review team recommended that the Branch develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility. Dr. Miller questioned if there is an action plan in place to address the overdue regulations. Mr. Butner confirmed that the Branch has an action plan in place. Mr. DeCicco agreed that the Branch has an action plan in place and it is working; however, the Branch has not seen the completion of many of the action items yet. Mr. Phillip Scott indicated that it is difficult to predict when the Branch will be totally up-to-date with the regulations; however, he foresees that the Branch should be pretty up-to-date in the next four years. Mr. Butner added that the regulation development process should be a bit more streamlined with the recent hiring of a new attorney and also with some of the rulemaking process that is normally performed outside the Branch being incorporated into the Regulations Unit. Mr. Sollenberger noted that prior to the MRB, California submitted a letter transmitting a number of amendments for NRC review. Mr. Scott added that the State is planning on submitting another regulation package for NRC review in the near future to address Part 20 requirements. Ms. Cyr encouraged the State to submit comments to the NRC on upcoming regulations in order to help them implement requirements. Mr. Reynolds questioned the State's status on the fingerprinting requirements. Mr. Scott responded that the license conditions implementing the requirements have all been issued. Mr. Scott added that they are currently going through a quality assurance process. Mr. Virgilio questioned if there are tie-down or standard conditions for the remaining overdue regulations. Mr. Butner responded that there are not tie-down or standard conditions for all the remaining overdue regulations. Ms. Barbara Hamrick added that it is difficult to implement requirements with tie-downs or standard conditions due to the fact that the State would need to issue orders for that to occur. Mr. Virgilio questioned if there is a detailed milestone for each of the overdue regulations. Mr. Butner confirmed that the State has detailed milestones for each of the overdue regulations in a supplement to the program improvement plan. The MRB agreed that California's performance met the standard for an "unsatisfactory" rating for this indicator and agreed with the recommendation.

Mr. John Jankovich presented the findings regarding the non-common performance indicator, Sealed Source and Device (SS&D) Evaluation Program. His presentation corresponded to Section 4.2 of the proposed final IMPEP report. The review team found California's performance to be "satisfactory" and identified a good practice. The review team recommended that the Branch's comprehensive procedure for conducting safety

evaluations of events and SS&D incidents be identified as a good practice. The MRB agreed that California's performance met the standard for a "satisfactory" rating for this indicator and agreed with the good practice.

Mr. Sollenberger indicated that although California has low-level radioactive waste (LLRW) disposal authority, there are currently no plans for a commercial LLRW disposal facility in the State. Accordingly, the review team did not review this indicator.

MRB Consultation/Comments on Issuance of Report. Mr. Sollenberger concluded, based on the discussion and direction of the MRB, which the California program was found "unsatisfactory" for the performance indicator, Compatibility Requirements, and "satisfactory" for all the remaining performance indicators reviewed. The MRB agreed with one recommendation proposed by the review team and agreed to keep the one recommendation from the 2006 follow-up IMPEP review open. The MRB also agreed with one good practice identified by the review team. Accordingly, the review team recommended, and the MRB agreed, that the California program was adequate to protect public health and safety and not compatible with NRC's program. Based on the results of the IMPEP review, the review team recommended, and the MRB agreed, that the period of Heightened Oversight of the California program be discontinued and that a period of Monitoring be instituted, with a periodic meeting in 2 years and continuation of calls with the State every 4 months. This determination was based on a discussion regarding the differences in the processes between the "Heightened Oversight" and "Monitoring" status. Accordingly, the review team recommended and the MRB agreed that the next full IMPEP review take place in approximately 4 years.

Comments. Mr. Butner indicated that it has been a difficult year for the Program with the various organizational changes that have taken place and dealing with certain challenges such as the implementation of the IC requirements. Mr. Butner added that the Program stays apprised on national events and issues. Mr. Butner noted that Mr. Greger and Ms. Hamrick of their Program have a very active involvement in the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors. Mr. Butner noted that he is very comfortable with the Branch's status with its regulations and the commitment from the Executive office and management with addressing outstanding regulations. Lastly, Mr. Butner thanked the NRC and the review team for their attention and support of their Program. Mr. Virgilio noted that he is looking forward to the upcoming OAS meeting and also, thanked the review team and the State. Mr. Passeti recognized the progress the State has been able to make despite the organizational changes within the Program. Mr. Sollenberger noted the immensity of the Program and thanked both the review team and the State. Mr. Sollenberger noted that Mr. Butner had been recently named the permanent chief of the Branch. In summary, Ms. Lukes noted that the MRB-approved good practice would be posted on the IMPEP Toolbox on the FSME public web site.

Items for Follow Up. Ms. Lukes noted that NRC staff would follow-up on the issue regarding how to improve its process for disseminating allegations to the States in the next Regional State Agreement Officers' meeting.

3. **Precedents/Lessons Learned.** The MRB established no new precedents to be applied to the IMPEP process during this meeting.

4. **Good Practice.** There was one good practice identified during this review. The review team recommended, and the MRB agreed, that the Branch's implementation of its comprehensive procedure to conduct safety evaluations of events and SS&D incidents be identified as a good practice.
5. **Adjournment.** The meeting was adjourned at approximately 2:55 p.m.