

July 24, 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

Joseph Gray, Associate General Counsel for
Licensing & Regulation
Office of the General Counsel

Robert Lewis, Director
Division of Materials Safety and State Agreements
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: JULY 15, 2008, TENNESSEE MANAGEMENT
REVIEW BOARD (MRB) MEETING

Enclosed are the minutes of the MRB meeting held on July 15, 2008. If you have comments or questions, please contact me at (301) 415-6701.

Enclosure: Minutes of the Management
Review Board Meeting

cc: Lawrence E. Nanney, Director
Tennessee Division of Radiological Health

John Parker, New Mexico
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

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MINUTES: MANAGEMENT REVIEW BOARD MEETING OF JULY 15, 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
Robert Lewis, Acting MRB Member, FSME
Joseph Gray, Acting MRB Member, OGC
Richard Blanton, Team Leader, FSME
Joshua Palotay, Team Member, FSME
Kim Lukes, FSME

Karen Meyer, FSME
Duncan White, FSME
Greg Morell, OEDO
Rebecca Ryan, OIG
R.K. Wild, OIG

By Videoconference:

Steven Reynolds, MRB Member, Region III

Rachel Browder, Team Member, Region IV

By Teleconference:

John Parker, OAS Liaison, NM
Donna Janda, Team Member, Region I
Karl Von Ahn, Team Member, OH
Lawrence Nanney, TN
Debra Shults, TN

Billy Freeman, TN
Johnny Graves, TN
Ruben Crosslin, TN
Mary Helen Short, TN

- 1. Convention.** Ms. Kim Lukes convened the meeting at 1:10 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. Tennessee IMPEP Review.** Mr. Richard Blanton, team leader, led the presentation of the Tennessee 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 Ohio during the period of April 21–April 25, 2008. A draft report was issued to the State for factual comment on May 29, 2008. Tennessee responded on June 25, 2008, by letter from Mr. Lawrence E. Nanney, Director, Division of Radiological Health. Based on the response, the State had clarifying comments, most of which were incorporated into the proposed final IMPEP report.

Mr. Blanton noted that during the 2004 IMPEP review, the review team made three recommendations in regard to program performance. After this IMPEP review, the review team recommended to close all three of the existing recommendations.

Common Performance Indicators. Mr. Joshua Palotay 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 Tennessee's performance with respect to this indicator to be "satisfactory, but needs improvement" and made three recommendations. The review

team recommended that the State evaluate the Division's projected staffing level and take appropriate action to ensure that the Division has adequate resources to achieve its primary objective of protecting public health, safety, and security. The review team also recommended that the State develop a method to document clearly that an inspector or license reviewer is qualified or approved to perform inspections or licensing actions of the different license types upon completion of specified training. Lastly, the review team recommended that the State review the training policy to ensure that it meets current and future needs of the staff and revise the policy, as appropriate, to include on-the-job training and security training. Mr. Joseph Gray questioned if the review team's reference to an "insufficient" staff as being a root cause for late inspections and untimely adoption of regulations was in regard to not having an adequate number of staff. Mr. Palotay affirmatively responded that the lack of staff was one of the root causes. Mr. Palotay added that a number of issues contributed to the high turnover rate, such as competition with local industry and low starting salaries. Mr. Robert Lewis questioned if the Division will have to lose four currently filled positions in addition to the five frozen vacant positions due to the Statewide initiative to reduce 2,000 filled positions. Mr. Lawrence Nanney confirmed that due to budget shortfalls in the State, the State has implemented a voluntary buyout program in an effort to eliminate 2,000 positions. Mr. Nanney added that he is hoping to get four eligible staff to accept the buyout option. Mr. Gray questioned what action the State should take in order to address the review team's recommendation of ensuring that the Division is adequately staffed. Mr. Palotay responded that he discussed various options with the staff for consideration when addressing the recommendation. Mr. Lewis asked and Mr. Palotay confirmed that the security training referenced in the recommendation for the staff to review its training policy to include on-the-job training and security training is the Increased Controls (IC) training. Mr. Palotay added that the focus of that recommendation was to ensure that training manuals are updated to reflect staff's completion of training courses. Mr. Virgilio questioned if the review team feels comfortable that all qualified staff are, in fact, appropriately qualified. Mr. Palotay responded that despite the lack of adequate documentation, the review team did not question the competency of the experienced staff. Ms. Debra Shults noted that it takes longer than 2 years for staff to complete required training courses or receive equivalent training. Mr. Reynolds asked if the statement regarding that overall staff is "well qualified from an education and experience standpoint" is inconsistent with an earlier statement in the IMPEP report that indicates "insufficient and inexperienced staff" as a root cause for late inspections and untimely adoption of regulations. Mr. Palotay responded that the two statements are separate and are therefore, not inconsistent. The MRB agreed to certain changes in the final IMPEP report to add clarifications about training and current vacant positions. The MRB agreed that Tennessee's performance met the standard for a "satisfactory, but needs improvement" rating for this indicator.

Ms. Donna Janda presented the findings regarding the common performance indicator, Status of Materials Inspection Program. Her presentation corresponded to Section 3.2 of the proposed final IMPEP report. The review team recommended that Tennessee's performance with respect to this indicator be found "satisfactory" and made no recommendations. Mr. Lewis questioned how many of the initial inspections were performed in the required 12 month period of time after license issuance. Ms. Janda did not have the exact number of initial inspections performed with her during the MRB. Mr. Lewis also questioned what was the review team's rationale for the determination of "satisfactory" rather than "satisfactory, but needs improvement". Mr. Blanton responded

that the review team took into consideration the State's implementation of a number of tools to help improve their Program (e.g., the implementation of an electronic inspection tracking system, DRH Track, to monitor the status of inspections). Mr. Gray questioned and Ms. Janda confirmed that there is a strong management commitment by the Division to correct weaknesses in the materials inspection program. Mr. Reynolds asked how many of the 14 inspections that were overdue have since been completed. Mr. Nanney responded that all 14 inspections have been completed. Mr. Reynolds questioned if the Division performed the majority of the overdue inspections towards the beginning of the review period or recently. Mr. Billy Freeman indicated that the Division has quickly reduced the number of overdue inspections to approximately 14 percent of Priority 1, 2, and 3 and initial inspections at the time of the review. Mr. Freeman is confident that the Division will address the 14 percent overdue inspections quickly. The MRB agreed that Tennessee's performance met the standard for a "satisfactory" rating for this indicator.

Ms. Janda 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 Tennessee's performance with respect to this indicator to be "satisfactory" and made no recommendations. The MRB agreed that Tennessee's performance met the standard for a "satisfactory" rating for this indicator.

Ms. Rachel Browder presented the findings regarding the common performance indicator, Technical Quality of Licensing Actions. Her presentation corresponded to Section 3.4 of the proposed final IMPEP report. The review team found Tennessee's performance with respect to this indicator to be "satisfactory" and made no recommendations. Mr. Gray asked what the significance was of the Division incorporating extended licenses into the timely renewal process. Ms. Browder indicated that the review team wanted to show the difference between what was done during the review period from the last IMPEP and what was being done at the time of this review. Mr. Virgilio questioned if all license reviewers are fully qualified. Ms. Browder responded that all five license reviewers are fully qualified. Mr. Virgilio asked for clarification regarding the Division's regulation of the majority of the nation's waste processor activities. Ms. Browder stated that the review team wanted to acknowledge the fact that the Division performs the majority of the licensing for the nation's waste processors. Mr. Lewis questioned if the Division would perform pre-licensing visits if a new license applicant is unknown. Ms. Browder responded that, in accordance with the new pre-licensing guidance, visits were not merited due to the fact that all the applicants had previous licenses from either other States or the NRC. Mr. Virgilio questioned if and Ms. Browder confirmed that the Radiological Information Notice, dated January 25, 2007, issued by the Division actually "encouraged" rather than required medical physicists to request an amendment so they may be named as an authorized medical physicist on the license. The MRB agreed that Tennessee's performance met the standard for a "satisfactory" rating for this indicator.

Mr. Blanton 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 Tennessee's performance with respect to this indicator to be "satisfactory" and made no recommendations. Mr. Lewis questioned if the 4 of the 34 incidents that were not reported in the appropriate time frame were ultimately reported. Mr. Blanton confirmed

that the 4 incidents were reported. Mr. Reynolds encouraged the Division to continue following up at sites after incidents, when needed. Mr. Gray questioned if the three recent incidents that were reported as not closed have been closed. Mr. Blanton responded that the Division does not close incidents until all compliance issues are resolved and enforcement action, if required, is completed. The MRB agreed that Tennessee's performance met the standard for a "satisfactory" rating for this indicator.

Non-Common Performance Indicators. Mr. Palotay 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 Tennessee's performance to be "satisfactory, but needs improvement" and made no recommendations. Mr. Reynolds questioned if the review team should add a recommendation to create a plan to address overdue amendments. Mr. Blanton responded that the Division already has a plan in place so the review team did not need to make such a recommendation. Mr. Palotay added that the overdue amendments were also due to the Division not having enough staff available to develop regulations. Mr. John Parker sympathized with the State's lack of staff. Mr. Reynolds questioned if there is one individual dedicated to compatibility. Mr. Nanney indicated that the staff person dedicated to compatibility retired immediately without notice. A new staff person took the position without any previous training or experience in the area. The MRB agreed that Tennessee's performance met the standard for a "satisfactory, but needs improvement" rating for this indicator.

Mr. Karl Von Ahn 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 Tennessee's performance to be "satisfactory, but needs improvement" and made a recommendation. The review team recommended that the Division establish a means to ensure evaluations are conducted with thoroughness; consistency with ANSI standards and NUREG-1556, Volume 3; and adherence to existing guidance in product evaluations. Mr. Gray questioned if there are any specifics as to how the Division will ensure a thorough evaluation. Mr. Von Ahn responded that one of the review team's concerns was ensuring the Division uses the appropriate checklist for both amendments and new applications. Mr. Virgilio questioned if the SS&D incidents as a result of the Berthold Technologies LB 7400 Series devices were appropriately captured in the Nuclear Material Events Database (NMED). Mr. Von Ahn confirmed that the incidents were captured in NMED. Mr. Gray questioned if the Division evaluated the root cause of the individual incidents related the Berthold Technologies LB 7400 Series devices. Mr. Von Ahn indicated that the review team was concerned with the Division not addressing the trending or common cause of these issues. Mr. Lewis questioned if the Berthold letter enclosed in the proposed final IMPEP report is publicly available. Mr. Blanton noted that NRC staff reviewed the letter and concluded that the letter could be publicly available. Mr. Reynolds complimented Mr. Von Ahn and the review team for the very thorough discussion and documentation in Appendix F and in the section related to the SS&D Evaluation Program. The MRB agreed that Tennessee's performance met the standard for a "satisfactory, but needs improvement" rating for this indicator.

Mr. Blanton indicated that although Tennessee 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. Blanton concluded, based on the discussion and direction of the MRB, that the Tennessee program was found “satisfactory, but needs improvement” for the performance indicators, Technical Staffing and Training, Compatibility Requirements, and SS&D Evaluation Program and “satisfactory” for all the remaining performance indicators reviewed. Accordingly, the review team recommended, and the MRB agreed, that the Tennessee program was adequate, but needs improvement, and compatible with NRC’s program. Based on the results of the IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 4 years.

Comments. Mr. Nanney thanked the review team for its comprehensive and thorough review. Mr. Nanney indicated that the Division will respond to the SS&D-related recommendation; however, the Division may need to consult further with the review team to ensure that they appropriately respond to the recommendation. Mr. Nanney stressed his personal commitment and the commitment of his staff to improve the weaknesses. Mr. Nanney also thanked the MRB for their review and incisive questions about the Program. Mr. Von Ahn stated that he appreciated the opportunity to participate on the review team and noted that it is beneficial to see the differences between State programs. Mr. Parker noted the very thorough review. Mr. Virgilio thanked the review team, the State, and the MRB for their participation. Mr. Virgilio restated that if the Division needs assistance in addressing the SS&D recommendation, the Division should not hesitate to contact the review team.

3. **Precedents/Lessons Learned.** The MRB established no new precedents to be applied to the IMPEP process during this meeting.
4. **Adjournment.** The meeting was adjourned at approximately 2:40 p.m.