

August 27, 2009

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: Charles L. Miller, Director */RA/*
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: AUDIT OF U.S. NUCLEAR REGULATORY COMMISSION'S
AGREEMENT STATE PROGRAM (OIG-09-A-08)

Your July 1, 2009, memorandum to R. W Borchardt requested an update to the five recommendations from the subject audit. As indicated in your July 1, 2009, memorandum four of the five recommendations have been resolved. Our detailed response to recommendation 4 provides a specific plan of action to address the concerns raised in your analysis of this recommendation. We offer the following status updates on each of the recommendations:

Recommendations 1, 2, 3 and 5 Status

The Agency's responses remain on schedule as indicated in the April 14, 2009, and June 24, 2009, responses.

Recommendation 4 Status

Staff has engaged the Office of the General Counsel (OGC) and is currently awaiting OGC's ruling on the potential legal impediments to Office of the Inspector General's (OIG) envisioned information sharing tool on allegation and enforcement data, as well as all regulatory information that may be beneficial to the conduct of regulatory business among the States and NRC. Some potential impediments for allegation and enforcement data identified by staff are: 1) Agreement States are subject to their State laws that could prohibit or limit the State from sharing information or taking a specific action that NRC can take. Recently, the wide range of administrative and legal impediments that the Agreement States faced for implementing the fingerprinting orders resulted in their licensees sending the fingerprints directly to the NRC for processing. 2) If NRC's public, or even a protected, website was used as the portal to share certain types of this information, it could result in a defacto "Black List" of individuals who have not been given full benefit of due process. 3) If OGC does not identify any legal impediments, NRC would have to pursue an Office of Management and Budget information collection clearance to collect the information. Given that NRC has relinquished its regulatory authority, it could be difficult to justify the additional paperwork burden that would be placed on the States as a result of this information collection.

CONTACT: Robert J. Lewis, FSME/MSSA
301-415-3340

Once staff has OGC's ruling, staff will have a better idea of the next step staff will need to take to address this recommendation. Regardless, staff will engage the Organization of Agreement States (OAS) Executive Board to discuss options for voluntary collection of this information during the OAS Annual Meeting in September 2009. We also intend to poll the Agreement States to gather information regarding the States' abilities, as well as the legality, of the sharing of this information, in addition to determining what may already be available. The responses from the individual States will also inform the staff's formulation of potential options for collection of this information.

Completion Date: December 2009

Please contact Robert J. Lewis, Director, Division of Materials Safety and State Agreements, at (301) 415-3340, should you have any questions regarding this response.

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