August 19, 2009

Jon Goldstein, Deputy Secretary
New Mexico State
Environment Department
1190 St. Francis Drive
Santa Fe, NM 87505

Dear Mr. Goldstein:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the evaluation of Agreement State programs. Enclosed for your review is the draft IMPEP report that documents the results of the Agreement State review held in New Mexico on July 20-24, 2009. I was the team leader for the review. The review team's preliminary findings were discussed with you and Carlos Romero, Director, Environmental Health Division; on the last day of the review. The review team's proposed recommendations are that the New Mexico Agreement State Program be found adequate to protect public health and safety and compatible with NRC's program.

NRC conducts periodic reviews of Agreement State programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's program. The process, titled IMPEP, employs a team of NRC and Agreement State staff to assess Agreement State and NRC Regional radioactive materials programs. All reviews use common criteria in the assessment and place primary emphasis on performance. Two additional areas applicable to your program have been identified as non-common performance indicators and are also addressed in the assessment. The final determination of adequacy and compatibility of each program, based on the review team's report, is made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager, who serves as a liaison to the MRB.

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the review team's draft report for your review and comment prior to submitting the report to the MRB. Comments are requested within 4 weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner that will be responsive to your needs.

The team will review your response, make any necessary changes to the report, and issue it to the MRB as a proposed final report. Coordinating with your staff, I scheduled the New Mexico MRB Meeting for October 7, 2009, from 1:30-3:00 p.m. EDT. NRC will provide invitational travel for you or your designee to attend the MRB meeting at NRC Headquarters in Rockville, Maryland. NRC has video conferencing capability if it is more convenient for the State to participate through this medium. Please contact me if you desire to establish a video conference for the meeting.

If you have any questions regarding the enclosed report, please contact me at (630) 829-9650.

Thank you for your cooperation.

Sincerely,

/RA/

Aaron T. McCraw
IMPEP Project Manager
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosure:
Draft New Mexico IMPEP Report

cc w/encl: Carlos Romero, Director
Environmental Health Division

John Parker, Chief
Radiation Control Bureau

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DATE	08/19/09							

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF THE NEW MEXICO AGREEMENT STATE PROGRAM

July 20-24, 2009

DRAFT REPORT

Enclosure

1.0 INTRODUCTION

This report presents the results of the review of the New Mexico Agreement State Program. The review was conducted during the period of July 20-24, 2009, by a review team composed of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Kentucky. Team members are identified in Appendix A. The review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of Final General Statement of Policy," published in the *Federal Register* on October 16, 1997, and NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. Preliminary results of the review, which covered the period of June 11, 2005, to July 24, 2009, were discussed with New Mexico managers on the last day of the review.

[A paragraph on the results of the Management Review Board (MRB) meeting will be included in the final report.]

The New Mexico Agreement State Program is administered by the Radiation Control Bureau (the Bureau) in the Environmental Health Division (the Division) of the New Mexico Environment Department (the Department). Organization charts for the Department and the Bureau are included as Appendix B.

At the time of the review, the New Mexico Agreement State Program regulated 189 specific licenses authorizing byproduct, source, and certain special nuclear materials. The review focused on the radioactive materials program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between NRC and the State of New Mexico.

In preparation for the review, a questionnaire addressing the common and applicable non-common performance indicators was sent to the Bureau on March 31, 2009. The Bureau provided its response to the questionnaire on June 30, 2009. A copy of the questionnaire response can be found in NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML092110656.

The review team's general approach for conduct of this review consisted of: (1) examination of the Bureau's response to the questionnaire; (2) review of applicable New Mexico statutes and regulations; (3) analysis of quantitative information from the Bureau's database; (4) technical review of selected regulatory actions; (5) field accompaniments of three inspectors; and (6) interviews with staff and managers. The review team evaluated the information gathered against the established criteria for each common and applicable non-common performance indicator and made a preliminary assessment of the New Mexico Agreement State Program's performance.

Section 2.0 of this report covers the State's actions in response to open recommendations made during the previous review. Results of the current review of the common performance indicators are presented in Section 3.0. Section 4.0 details the results of the review of the applicable non-common performance indicators, and Section 5.0 summarizes the review team's findings and recommendations. The review team's recommendations are comments that relate

directly to program performance by the State. A response is requested from the State to all recommendations in the final report.

2.0 STATUS OF ITEMS IDENTIFIED IN THE PREVIOUS REVIEW

During the previous IMPEP review, covering the period of June 23, 2001, to June 10, 2005, the review team made two recommendations regarding to program performance. The status of the recommendations is as follows:

1. The review team recommends that the Program retrain its staff with regard to following its established procedure for termination of radioactive material licenses and followup actions by the inspectors regarding closeout surveys or additional documentation to support the termination request. (Section 3.4 of the 2005 IMPEP Report)

   Status: The Bureau revised its procedure regarding license termination to put more responsibility on Bureau management to ensure that the proper documentation of radioactive material disposition and closeout survey records are in the license file prior to termination. The review team found that actions terminating licenses were well documented. Terminated licenses contained documentation of proper disposal or transfer of the radioactive material and records of closeout surveys by the inspectors. This recommendation is closed.

2. The review team recommends that the Program develop and implement a process that ensures an adequate evaluation of license renewal information. (Section 3.4 of the 2005 IMPEP Report)

   Status: Following the 2005 review, the Bureau revised its procedure to require licensees to submit a complete application for renewal requests at least 30 days in advance of the expiration of their existing licenses. The procedure requires the license reviewer to complete a checklist that helps determine whether a complete review is warranted (as with an application for a new license) or a limited review will suffice. The determination is based on the complexity of the license, as well as the number and magnitude of changes to the licensee's program since the last review of the license. The review team verified that staff was aware of the procedural revision and followed the procedure in the renewals evaluated by the review team. This recommendation is closed.

3.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review NRC Regional and Agreement State radioactive materials programs. These indicators are: (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

3.1 Technical Staffing and Training

Issues central to the evaluation of this indicator include the Bureau's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate

this indicator, the review team examined the Bureau's questionnaire response relative to this indicator, interviewed managers and staff, reviewed job descriptions and training records, and considered any workload backlogs.

The day-to-day operations of the New Mexico Agreement State Program are executed by the Licensing, Registration, and Inspection Section (the Section). Staff members in the Section perform licensing, registration, inspection, and incident response activities for radioactive material and x-ray facilities. When fully staffed, the Section is composed of eight technical staff members and the Section Supervisor. At the time of the review, the Section employed seven technical staff members. One staff member was primarily assigned to licensing activities. The inspection workload was split among the other six staff members. The license reviewer and four inspectors are located in the Santa Fe office; the other two inspectors are located in the Albuquerque field office.

Four staff members left the Section during the review period, including the Section Supervisor who was hired during the review period. Two technical staff members were hired during the review period. At the time of the review, the Section Supervisor position and one inspector position were vacant. The Bureau was seeking an exemption to the State-wide hiring freeze to fill the vacant inspector position. There were no efforts to fill the Section Supervisor position, which had only been vacant since June 2009. The review team concluded that, when fully staffed, the Section's staffing level is adequate to carry out its regulatory duties.

Staff members are required to have a Bachelor's degree or equivalent experience in a physical or biological science or engineering. All technical staff members are called Environmental Scientists/Specialists and can be classified as Basic, Operational, or Advanced depending on experience and time in the program. At the time of the review, five of the staff members were classified as Advanced, and two were classified as Operational.

The Bureau has a documented training and qualification program for technical staff that is consistent with NRC Inspection Manual Chapter (IMC) 1246, "Formal Qualification Programs in the Nuclear Material Safety and Safeguards Program Area." Qualification is achieved through a combination of education and experience, formal classroom training, and on-the-job training. The Bureau maintains training and qualification records for each staff member. The review team noted that Bureau management encourages and supports training opportunities, based on program needs and funding. The review team concluded that the Section staff's qualifications and training are adequate to carry out its regulatory duties.

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

3.2 Status of Materials Inspection Program

The review team focused on five factors in reviewing this indicator: inspection frequency, overdue inspections, initial inspections of new licenses, timely dispatch of inspection findings to licensees, and performance of reciprocity inspections. The review team's evaluation was based on the Bureau's questionnaire response relative to this indicator, data gathered from the Bureau's databases, an examination of completed inspection casework, and interviews conducted with the Bureau Chief and staff.

The review team compared the Bureau's inspection frequencies for various types of licenses to those prescribed by NRC's IMC 2800, "Materials Inspection Program." The Bureau's inspection frequencies are generally the same as those prescribed in IMC 2800; however, some categories of licenses are inspected more frequently, including nuclear pharmacy, research and development, and both fixed and portable nuclear gauge licenses. The Bureau does not have any inspection intervals longer than 3 years, whereas IMC 2800 prescribes inspection intervals of up to 5 years for several license types.

During the review period, the Bureau conducted 259 inspections of high priority (Priority 1, 2, and 3) licensees, as well as 7 initial inspections. All of the initial inspections reviewed were performed within 12 months of license issuance in accordance with the requirements in IMC 2800. The review team identified five Priority 1 and 2 inspections were performed overdue, due to staff turnover during the beginning of the review period. The review team verified that there were no Priority 1, 2, or 3 inspections overdue at the time of the review. Overall the review team calculated that the Bureau performed less than 2 percent of its high priority and initial inspections overdue during the review period.

The review team also evaluated the timeliness of the issuance of inspection findings to licensees. Of the 17 inspection reports reviewed, only 1 inspection report was issued to the licensee greater than 30 days after the inspection. In this case, the letter to the licensee was not sent until the next inspection approximately 6 months later. All other inspection reports reviewed were issued very promptly, usually within a few days of the inspection date.

The Bureau stated in its response to the questionnaire that it issued 152 reciprocity licenses during Calendar Years 2005 through 2008. The Bureau did not identify which licensees were candidates for inspection based on the criteria in IMC 1220 "Processing of NRC Form 241 and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20." Using the Bureau's records, the review team determined that the Bureau conducted reciprocity inspections of at least 20 percent of all reciprocity licensees during each of the years covered by the review period.

The review team determined that the Bureau adequately planned for the initial set of Increased Controls inspections of affected licensees. The Bureau identified 26 licensees that were subject to the Increased Controls and performed all of the first-year inspections in a timely manner. Subsequent inspections of Increased Controls licensees evaluated the pertinent aspects of the security measures, as documented in each inspection report's field notes.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

3.3 Technical Quality of Inspections

The review team evaluated inspection reports, enforcement documentation, inspection notes, and interviewed the responsible inspectors for 17 radioactive materials inspections conducted during the review period. The casework consisted of a cross-section of inspections conducted by the six qualified inspectors. The casework included inspections of various license types, including: nuclear medicine, high dose-rate remote afterloader, medical broad scope, industrial

radiography, well logging, self-shielded irradiator, nuclear pharmacy, portable gauge, and research/development licensees. Appendix C lists the inspection casework files reviewed and includes case-specific comments. The review also included an examination of inspection casework for seven Increased Controls inspections that the Bureau performed.

Based on the evaluation of casework, the review team determined that inspections were sufficient in scope to review the licensees' radiation safety and security programs. The review team noted that the inspection records were generally thorough, complete, and of high quality. Inspection records sufficiently documented observations of licensed activities, discussions held with licensees during exit interviews, and the inspector's overall assessment of licensee's radiation safety program, as applicable. The review team found that, in some cases including Increased Controls inspections, the letters sent to the licensees describing the violations identified by the inspector were not always clear. The letters vaguely stated the regulatory requirements and did not specify which portion of the requirement was violated by the licensee. In most cases, the "contrary to" statement did not provide a factual basis for the violation. The review team discussed with the Bureau the benefits of clearly documenting the specific violation of the State's regulatory requirements to help the licensee determine the necessary actions to resolve the violations, as well as to provide the next inspector sufficient detail to follow up on the violation during a future inspection. The Bureau Chief committed to ensuring that future letters to licensees clearly describe the regulatory requirement that was violated and the specific details of how it was violated.

The Bureau has detailed checklists/inspection forms for inspections of various license types, each color-coded for the specific license type. Following the inspection, these checklists/inspection forms are retained in the license file as the inspection record. The review team determined that the inspectors' use of the checklists aided in performing thorough performance-based inspections. The Bureau also has a written inspection procedure for general conduct of inspections, as well as supplemental guidance for inspections of various license types.

While on site, the review team evaluated the Bureau's control and handling of sensitive information. The review team found that information determined to be "security-related information" was adequately controlled to prevent inadvertent release and was maintained in a separate color-coded folder.

The Bureau has a policy of supervisory accompaniments of all qualified inspectors annually. The review team verified that all non-supervisory inspectors were accompanied annually during each year of the review period, as presented in the questionnaire and through interviews with the inspectors. The review team noted that the accompaniments were not documented on the Supervisor Accompaniment Forms, as required by the Bureau's procedures. Because of this, the review team was not able to evaluate the depth and scope of the accompaniments performed.

The review team observed that the Bureau maintains an adequate supply of appropriately calibrated radiation detection and measurement instrumentation to support the inspection program, as well as for response to radioactive materials incidents and emergency conditions. The instruments are sent to the instrument manufacturer annually for calibration. The Bureau also has access to the New Mexico Department of Health's Scientific Laboratory Division for

additional support, including alpha/beta spectroscopy, radiochemical analysis, and liquid scintillation counting.

A member of the review team accompanied three qualified radioactive materials inspectors on inspections during the week of June 29, 2009. The licensees inspected were an industrial radiography facility and two medical institutions with written directives required. Appendix C lists the inspector accompaniments and includes the review team's observations. The inspectors demonstrated performance-based inspection techniques and knowledge of the regulations. The inspectors were well trained, prepared for the inspections, and thorough in their audits of the licensees' radiation safety and security programs. The inspectors conducted interviews with appropriate personnel, observed licensed operations, conducted confirmatory measurements, and utilized good health physics practices. Overall, the review team determined that the inspections were adequate to assess radiological health, safety, and security at the licensed facilities.

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

3.4 Technical Quality of Licensing Actions

The review team examined completed licensing casework and interviewed license reviewers for 23 specific licenses. Licensing actions were reviewed for completeness, consistency, proper radioisotopes and quantities, qualifications of authorized users, adequacy of facilities and equipment, adherence to good health physics practices, financial assurance, operating and emergency procedures, appropriateness of license conditions, and overall technical quality. The casework was also reviewed for timeliness, use of appropriate correspondence, reference to appropriate regulations, supporting documentation, consideration of enforcement history, pre-licensing visits, peer or supervisory review, and proper signatures.

The licensing casework was selected to provide a representative sample of licensing actions completed during the review period. Licensing actions selected for evaluation included 5 new licenses, 4 amendments, 8 renewals (including 3 for expired licenses), 5 terminations, and 1 facility undergoing decommissioning. Files reviewed included a cross-section of license types, including: medical private practice, medical institution, medical broadscope, research and development, portable gauge, fixed gauge, irradiator, cyclotron, industrial radiography, and well logging. A listing of the licensing casework reviewed can be found in Appendix D.

Overall, the review team found that the licensing actions were thorough, complete, consistent, of high quality, and properly addressed health and safety issues. The staff followed appropriate licensing guides during the review process to ensure that licensees submitted the information necessary to support their request. Deficiency correspondence was used, as appropriate, to obtain additional information from the applicant or licensee. Prior to issuance of a license, the document goes through a peer and supervisory reviews. The review team determined that the peer and supervisory reviews contributed to the consistency between reviewers and the high quality of licensing documents. All licenses are signed out by the Bureau Chief.
The review team found that the Bureau implemented the pre-licensing guidance from NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) Letter

RCPD-07-026; dated March 20, 2007; prior to the deadline for implementation; however, at the time of the review, the revised guidance that was sent out via FSME Letter RCPD 08-020 had not yet been officially implemented. The review team discussed this with the Bureau Chief who indicated that it was an oversight on their part and would be corrected immediately. Based on a review of new licenses issued since the revised guidance was supposed to be implemented, the review team determined that the Bureau was still able to meet all of the essential objectives of the revised guidance for the new licenses.

The review team examined the Bureau's licensing practices in regard to the Increased Controls, fingerprinting requirements, and the National Source Tracking System. The review team noted that the Bureau added legally binding license conditions to the licenses that met the criteria for implementing these requirements in a timely manner. The Bureau has a practice of administratively inactivating the Increased Controls requirements when a licensee that is authorized to possess quantities of concern does not physically possess those quantities of material. By not capping the possession limit to reflect the actual inventory, the Bureau is dependent on the licensee to notify them of any changes to its inventory that would require implementation of the Increased Controls. The review team discussed with the Bureau the benefits of capping the possession limits below the quantities of concern when a licensee does not physically possess the materials. By doing so, the Bureau would have sufficient notification that the licensee intends to possess materials in quantities of concern and could perform an inspection to ensure the Increased Controls have been successfully implemented prior to authorizing the licensee to possess quantities of concern. The review team verified that the Bureau has a sufficient method to ensure that new license applications and license amendments are evaluated to determine the applicability of enhanced security requirements.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

3.5 Technical Quality of Incident and Allegation Activities

In evaluating the effectiveness of the Bureau's actions in responding to incidents and allegations, the review team examined the Bureau's response to the questionnaire relative to this indicator, evaluated selected incidents reported for New Mexico in the Nuclear Material Events Database (NMED) against those contained in the Bureau's files, and evaluated the casework for nine radioactive materials incidents. A listing of the casework examined, with case-specific comments, can be found in Appendix E. The review team also evaluated the Bureau's response to six allegations involving radioactive materials, including two allegations that NRC forwarded to the State during the review period.

The Bureau has written procedures for responding to incidents and allegations. The procedures address the actions to be taken upon the notification of an incident or allegation, an event tracking system, the method for conducting an event evaluation or investigation, the requirements for documentation, the process for notifying the NRC Headquarters Operations Center of reportable events, and the process for submitting event information to NMED. The review team found that the procedures provided thorough information to technical staff; however, the procedures were not always followed.

The review team determined that the weaknesses that resulted from not following the established procedures were primarily administrative. For all incidents evaluated, the review team found that the Bureau's responses were thorough, complete, and comprehensive. The incidents selected for review included lost or stolen radioactive material, a leaking source, and an equipment failure. Initial responses were prompt and well coordinated, and the level of effort was commensurate with the health and safety significance. The Bureau generally dispatched inspectors to the site when the possibility of an immediate threat to public health and safety existed. When no immediate threat was present and the Section determined that the licensee had qualified, competent individuals investigating the incident, the Bureau generally responded telephonically or with an on-site followup at the next inspection.

Although the procedures describe an event tracking system, the Bureau does not have a reliable system for tracking the number or status of radioactive material incidents. The review team identified information for incidents that occurred during the review period in four different places: the license files, the Bureau's chronology files, NMED, and the Bureau's response to the questionnaire. The review team recommends that the State develop and implement a reliable method to track incidents and allegations through completion.

For the majority of incidents evaluated, the review team had to review documentation in at least two of the sources of information in order to piece together sufficient documentation to review the Bureau's response. Even then, the documentation was often still incomplete and had to be supplemented by information from individual inspector's personal files. The individual inspectors are responsible for ensuring that the documentation for the incidents they are investigating gets into the appropriate files.

According to the Bureau's procedures, if an incident meets the reportability thresholds, as established in FSME Procedure SA-300 "Reporting Material Events," the Bureau should notify the NRC Headquarters Operations Center in the appropriate timeframe. In three out of the nine incidents reviewed, the Bureau did not report the incidents to the NRC Headquarters Operations Center in a timely manner. The Bureau failed to report two of the nine incidents at all. The review team discovered that a misunderstanding of the reporting requirements was the underlying cause for the Bureau's not reporting the two incidents. The review team clarified the reporting requirements for the Bureau. Because the Bureau does not use the NMED Software, these two incidents were also not submitted for inclusion in NMED. The Bureau committed to submitting the events to NRC Headquarters Operations Center and NRC's contractor responsible for maintaining NMED.

Through the review of the information for those events in NMED, the review team noted that in all cases the Bureau had not closed the events although the Bureau's investigation or followup had concluded. The review team also identified three event entries where NRC's contractor responsible for maintaining NMED had requested additional information regarding the event; however, there was no evidence indicating that the Bureau ever provided that information. The review team recommends that the State develop and implement a process to ensure all required information is submitted to NMED and to promote timely closure of NMED entries.

As detailed in the preceding paragraphs, the review team identified administrative weaknesses in the areas of tracking, documenting, and reporting incidents. The review team attributed these weaknesses to a lack of adherence to established procedures and a lack of management

oversight in these areas. During the review period, the Section Supervisor position experienced some turnover and was also vacant at times, bestowing the responsibility on the inspectors to ensure that the incidents were appropriately reported, the investigations were documented, and the incidents were closed out upon completion. The Bureau Chief indicated that he intends to appoint a technical staff member to serve as the point of contact for ensuring that incidents are tracked, documented, and reported as appropriate while the Section Supervisor position is vacant. The review team believes that identifying a point of contact and developing and implementing a tracking system, as recommended by the review team, will provide a reliable system to help ensure that incidents are thoroughly documented and reported, if necessary.

In evaluating the effectiveness of the Bureau's response to allegations, the review team evaluated the casework for six allegations. The review team concluded that the Section consistently took prompt and appropriate action in response to concerns raised. The Bureau notified the allegers of the conclusion of the investigations. The review team identified the same tracking and documentation weaknesses described above for allegations as well.

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

4.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State programs: (1) Compatibility Requirements, (2) Sealed Source and Device Evaluation Program, (3) Low-level Radioactive Waste Disposal Program, and (4) Uranium Recovery Program. NRC's Agreement with the State of New Mexico does not relinquish the authority for a sealed source and device evaluation program or uranium recovery program; therefore, only the non-common performance indicators Compatibility Requirements and Low-level Radioactive Waste Disposal Program were applicable to this review.

4.1 Compatibility Requirements

4.1.1 Legislation

New Mexico became an Agreement State in 1974. The statutory authority for the New Mexico program is found in the Radiation Protection Act. The Bureau is designated as the State's radiation control agency. The review team noted that no legislation affecting the radiation control program was passed during the review period.

4.1.2 Program Elements Required for Compatibility

The New Mexico regulations pertaining to radiation control apply to all ionizing radiation, whether emitted from radionuclides or devices. New Mexico requires a license for possession, and use, of all radioactive material.

The review team examined the State's regulatory process and found that the process takes about 12 months. The Bureau is responsible for drafting and revising the State's regulations pertaining to radiation control. After preparation of a package of draft regulations, the Bureau

obtains approval from the Radiation Technical Advisory Council. The Council must approve all rule changes before the process for rule promulgation can proceed. The public, NRC, other agencies, and all potentially affected licensees and registrants are offered an opportunity to comment during the rulemaking process. Comments are considered and incorporated, as appropriate, before the regulations are finalized, approved, and filed. The Environmental Improvement Board is the rule promulgating authority for radiation and all other Department programs. New Mexico's rules and regulations are not subject to sunset laws. The Bureau has the authority to issue alternate legally binding requirements, such as license conditions, in lieu of regulations.

The review team evaluated the Bureau's response to the questionnaire relative to this indicator, reviewed the status of regulations required to be adopted by the State under the Commission's adequacy and compatibility policy, and verified the adoption of regulations with data obtained from the State Regulation Status sheet that FSME maintains.

Current NRC policy requires that Agreement States adopt certain equivalent regulations or legally binding requirements no later than 3 years after the effective date of NRC's regulations. During the review period, the State addressed 14 amendments via rulemaking or adopting alternate legally binding requirements. Ten of the amendments were addressed in a rulemaking package that became effective on May 30, 2009, six of which were adopted beyond the 3-year Agreement State adoption period. With this package, the State is up to date on all amendments that are required through February 2011.

The following amendment will need to be addressed by the Bureau in future rulemakings or by adopting alternate generic legally binding requirements:

- "Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent," 10 CFR Parts 19 and 20 amendment (72 FR 68043), that is due for Agreement State adoption by February 15, 2011.

Based on the IMPEP evaluation criteria, the review team recommends that New Mexico's performance with respect to the indicator, Compatibility Requirements, be found satisfactory.

4.2 Low-level Radioactive Waste Disposal Program

In 1981, NRC amended its Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" to allow a State to seek an amendment for the regulation of low-level radioactive waste (LLRW) as a separate category. Those States with Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need of an amendment. Although the New Mexico Agreement State Program has LLRW disposal authority, NRC has not required States to have a program for licensing a LLRW disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, it is expected to put in place a regulatory program that will meet the criteria for an adequate and compatible LLRW disposal program. At this time, there are no plans for a commercial LLRW disposal facility in New Mexico. Accordingly, the review team did not evaluate this indicator.

5.0 SUMMARY

As noted in Sections 3.0 and 4.0, the review team found New Mexico's performance to be satisfactory, but needs improvement, for the performance indicator, Technical Quality of Incident and Allegation Activities, and satisfactory for all other performance indicators reviewed. The review team made two recommendations regarding program performance. Overall, the review team recommends that the New Mexico Agreement State Program be found adequate to protect public health and safety and compatible with NRC's program. Based on the results of this review, the review team recommends that the next full IMPEP review of the New Mexico Agreement State Program take place in approximately 4 years.

Below are the recommendations, as mentioned earlier in the report, for evaluation and implementation by the State:

1. The review team recommends that the State develop and implement a reliable method to track incidents and allegations through completion. (Section 3.5)

2. The review team recommends that the State develop and implement a process to ensure all required information is submitted to NMED and to promote timely closure of NMED entries. (Section 3.5)

LIST OF APPENDIXES

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	**Area of Responsibility**
Aaron McCraw, FSME	Team Leader Technical Quality of Incident and Allegation Activities
Linda McLean, Region IV	Technical Staffing and Training Compatibility Requirements
James Thompson, Region IV	Status of Materials Inspection Program Technical Quality of Inspections Inspector Accompaniments
Matthew McKinley, KY	Technical Quality of Licensing Actions

APPENDIX B

NEW MEXICO ORGANIZATION CHARTS

ADAMS ACCESSION NO.: ML092110695

APPENDIX C

INSPECTION CASEWORK REVIEWS

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

File No.: 1
Licensee: Permian NDT — License No.: IR 426
Inspection Type: Field, Unannounced — Priority: 1
Inspection Date: 4/28/09 — Inspector: CS

File No.: 2
Licensee: Desert Industrial X-Ray — License No.: IR 362
Inspection Type: Routine, Unannounced — Priority: 1
Inspection Date: 4/28/09 — Inspector: CS

File No.: 3
Licensee: Integrity Testing — License No.: IR 451
Inspection Type: Initial, Unannounced — Priority: 1
Inspection Date: 4/20/09 — Inspector: SR

File No.: 4
Licensee: Permian NDT — License No.: IR 426
Inspection Type: Routine, Announced — Priority: 1
Inspection Date: 4/17/07 — Inspector: EV

File No.: 5
Licensee: Black Warrior Wireline — License No.: WL 032
Inspection Type: Routine, Announced — Priority: 3
Inspection Date: 5/12/08 — Inspector: DB

File No.: 6
Licensee: Conam Inspection — License No.: IR 268
Inspection Type: Routine, Unannounced — Priority: 1
Inspection Date: 12/4/07 — Inspector: DB

Comment:
Inspection findings, including a Notice of Violation, were sent to licensee greater than 30 days after inspection.

File No.: 7
Licensee: Premier NDT — License No.: IR 399
Inspection Type: Routine, Unannounced — Priority: 1
Inspection Date: 8/21/08 — Inspector: DB

File No.: 8
Licensee: Blue Jet, Inc. License No.: WL 034
Inspection Type: Routine, Unannounced Priority: 3
Inspection Date: 3/20/07 Inspector: DB

Comment:
Violations were not clearly stated. The “contrary-to” statement was not adequately supported with facts.

File No.: 9
Licensee: EMCC License No.: RD 449
Inspection Type: Initial, Unannounced Priority: 5
Inspection Date: 10/31/08 Inspector: WM

File No.: 10
Licensee: Biotech License No.: RP 301
Inspection Type: Routine, Unannounced Priority: 2
Inspection Date: 1/20/09 Inspector: SR

File No.: 11
Licensee: Associated Technology License No.: DM 311
Inspection Type: Routine, Announced Priority: 5
Inspection Date: 10/8/08 Inspector: EV

File No.: 12
Licensee: PHC Las Cruces License No.: MI 410
Inspection Type: Routine, Announced Priority: 2
Inspection Date: 4/27/09 Inspector: CS

File No.: 13
Licensee: Eagle NDT License No.: TX L06176
Inspection Type: Reciprocity, Unannounced Priority: 1
Inspection Date: 5/20/09 Inspector: CS

File No.: 14
Licensee: Pathfinder Energy Services License No.: TX L05236
Inspection Type: Reciprocity, Announced Priority: 3
Inspection Date: 5/19/09 Inspector: CS

File No.: 15
Licensee: American X-Ray License No.: TX L05974
Inspection Type: Reciprocity, Unannounced Priority: 1
Inspection Date: 3/28/08 Inspector: CS

File No.: 16
Licensee: APEX Geoscience License No.: TX L04929
Inspection Type: Reciprocity, Unannounced Priority: 5
Inspection Date: 2/6/08 Inspector: SR

File No.: 17
Licensee: Kimball & Associates License No.: NRC 37-17717-02
Inspection Type: Reciprocity, Unannounced Priority: 5
Inspection Date: 8/22/07 Inspector: DB

INSPECTOR ACCOMPANIMENTS

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

Accompaniment No.: 1
Licensee: New Mexico Oncology License No.: MI 383-09
Inspection Type: Routine, Announced Priority: 2
Inspection Date: 7/1/09 Inspector: DB

Comment:
Entrance and exit meetings were held with only the Radiation Safety Officer present.

Accompaniment No.: 2
Licensee: Christus Saint Vincent License No.: MI 213-52
Inspection Type: Routine, Announced Priority: 2
Inspection Date: 6/30/09 Inspector: SR

Accompaniment No.: 3
Licensee: Atomic Inspection, Inc. License No.: MI 383-09
Inspection Type: Routine, Announced Priority: 1
Inspection Date: 6/29/09 Inspector: CS

Comment:
A contamination probe was used to measure ambient radiation levels.

APPENDIX D

LICENSE CASEWORK REVIEWS

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

File No.: 1
Licensee: IBA Molecular North America, Inc. — License No.: AP 404
Types of Action: Decommissioning — Amendment No.: 15
Date Issued: Pending — License Reviewer: MR

File No.: 2
Licensee: Linac Systems, LLC — License No.: AP 453
Type of Action: New — Amendment No.: 00
Date Issued: 5/04/09 — License Reviewer: DB

File No.: 3
Licensee: UNM Radiation Safety — License No.: BM 233
Types of Action: Renewal — Amendment No.: 77
Date Issued: Pending — License Reviewer: N/A

File No.: 4
Licensee: Albuquerque, City of — License No.: DM 006
Type of Action: Termination — Amendment No.: 13
Dates Issued: 7/1/09 — License Reviewer: JP

File No.: 5
Licensee: Armstrong Construction Co., Inc. — License No.: DM 017
Type of Action: Termination — Amendment No.: 11
Date Issued: 7/14/09 — License Reviewer: JP

File No.: 6
Licensee: Santa Fe, City of — License No.: DM 193
Type of Action: Termination — Amendment No.: 09
Date Issued: 10/9/08 — License Reviewer: DH

File No.: 7
Licensee: Marvin Brandstetter, Engineer — License No.: DM 285
Type of Action: Renewal — Amendment No.: 04
Date Issued: 5/31/09 — License Reviewer: DB

File No.: 8
Licensee: Taos Gravel Products License No.: DM 289
Type of Action: Renewal Amendment No.: 04
Date Issued: Pending License Reviewer: N/A

File No.: 9
Licensee: William M. Serazio Company License No.: DM 361
Type of Action: Renewal Amendment No.: 02
Date Issued: Pending License Reviewer: N/A

File No.: 10
Licensee: Gordon Environmental, Inc. License No.: DM 371
Type of Action: Renewal Amendment No.: 03
Date Issued: Pending License Reviewer: N/A

File No.: 11
Licensee: Bohannon Huston, Inc License No.: DM 456
Type of Action: New Amendment No.: 00
Date Issued: 6/23/09 License Reviewer: DB

File No.: 12
Licensee: Arizona Public Service Company License No.: GA 016
Type of Action: Termination Amendment No.: 44
Date Issued: 4/7/09 License Reviewer: DH

File No.: 13
Licensee: Caprock Pipe & Supply, LP License No.: GA 058
Type of Action: Renewal Amendment No.: 13
Date Issued: 4/18/06 License Reviewer: DB

File No.: 14
Licensee: Ethicon Endo Surgery License No.: GI 316
Type of Action: Amendments Amendment No.: 06
Dates Issued: Various License Reviewers: Various

File No.: 15
Licensee: American X-Ray & Inspection Services License No.: IR 448
Type of Action: New Amendment No.: 00
Date Issued: 5/19/08 License Reviewer: DB

File No.: 16
Licensee: Permian NDT License No.: IR 426
Type of Action: Amendments Amendment No.: 08
Dates Issued: Various License Reviewers: Various

File No.: 17
Licensee: Robert A. Graor, M.D., P.A. License No.: MD 457
Type of Action: New Amendment No.: 00
Date Issued: 6/25/09 License Reviewer: DB

File No.: 18
Licensee: Lea Regional Medical Center License No.: MI 122
Type of Action: Renewal Amendment No.: 47
Date Issued: 11/15/05 License Reviewer: DB

File No.: 19
Licensee: Miner's Colfax Medical Center License No.: MI 135
Type of Action: Termination Amendment No.: 27
Date Issued: 3/27/09 License Reviewer: MR

File No.: 20
Licensee: Energy Matter Conservation Corporation License No.: RD 449
Type of Action: New Amendment No.: 00
Date Issued: 5/1/08 License Reviewer: DB

File No.: 21
Licensee: Warrior Energy Services Corp. License No.: WL 032
Type of Action: Amendments Amendment No.: 17
Dates Issued: Various License Reviewers: Various

File No.: 22
Licensee: Baker Hughes Oilfield Operations, Inc. License No.: WL 241
Type of Action: Renewal Amendment No.: 35
Date Issued: Pending License Reviewer: N/A

File No.: 23
Licensee: Gray Wireline Services, Inc. License No.: WL 414
Type of Action: Amendments Amendment No.: 08
Dates Issued: Various License Reviewers: Various

APPENDIX E

INCIDENT CASEWORK REVIEWS

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

File No.: 1
Licensee: BJ Services Co. License No: GA 023
Date of Incident: 12/9/08 NMED No.: 090099
Investigation Date: N/A Type of Incident: Lost/Stolen Material
Type of Investigation: None

Comments:
a) Event was not reported in a timely manner, per FSME SA-300.
b) File did not contain a record for investigation or followup at next inspection.

File No.: 2
Licensee: Public Service of New Mexico License No: GL
Date of Incident: 4/18/08 NMED No.: 080267
Investigation Date: 4/23-34/08 Type of Incident: Lost/Stolen Material
Type of Investigation: Site

Comment:
Event was not reported in a timely manner, per FSME SA-300.

File No.: 3
Licensee: Permian NDT License No: IR 426
Date of Incident: 12/15/07 NMED No.: N/A
Investigation Date: 4/28/08 Type of Incident: Equipment Failure
Type of Investigation: Next Inspection

Comment:
Event was not reported to NRC Headquarters Operations Center.

File No.: 4
Licensee: New Mexico Radiation Control Program License No: CS 069
Date of Incident: 4/1/07 NMED No.: 070203
Investigation Date: 4/1/07 Type of Incident: Lost/Stolen Material
Type of Investigation: Site

File No.: 5
Licensee: Rio Grande Radiological Physics Group, LLC License No: RS 433
Date of Incident: 11/17/06 NMED No.: 060710
Investigation Date: 11/20/08 Type of Incident: Lost/Stolen Material
Type of Investigation: Site

File No.: 6
Licensee: A.S. Horner, Inc.
License No: DM 375
Date of Incident: 8/19/06
NMED No.: 060533
Investigation Date: N/A
Type of Incident: Lost/Stolen Material
Type of Investigation: None

Comment:
Event was not reported in a timely manner, per FSME SA-300.

File No.: 7
Licensee: Presbyterian Kaseman Hospital
Cancer Treatment Center
License No: BR 423
Date of Incident: 7/14/06
NMED No.: N/A
Investigation Date: N/A
Type of Incident: Leaking Source
Type of Investigation: None

Comment:
Event was not reported to NRC Headquarters Operations Center.

File No.: 8
Licensee: Baker Hughes Oilfield Operations, Inc.
License No: WL 241
Date of Incident: 1/31/06
NMED No.: 060083
Investigation Date: N/A
Type of Incident: Lost/Stolen Material
Type of Investigation: None

Comment:
File did not contain a record for investigation or followup at next inspection.

File No.: 9
Licensee: AMEC Earth & Environmental
License No: DM 201
Date of Incident: 8/5/05
NMED No.: 050521
Investigation Date: 8/15/05
Type of Incident: Lost/Stolen Material
Type of Investigation: Next Inspection