February 12, 2010

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

Bradley W. Jones, Assistant General Counsel
for Rulemaking and Fuel Cycle
Office of the General Counsel

Cynthia A. Carpenter, Deputy Director
Office of Federal and State Materials
and Environmental Management Programs

Elmo E. Collins, Jr., Regional Administrator
Region IV

FROM: Michelle R. Beardsley, Health Physicist ***/RA K. Meyer for/***
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: MARCH 1, 2010 MANAGEMENT REVIEW BOARD MEETING TO DISCUSS RECENT PERIODIC MEETINGS

A Management Review Board (MRB) meeting to discuss the results of periodic meetings held with the Iowa, South Carolina, and Rhode Island Agreement State Programs has been scheduled for **Monday, March 1, 2010 from 2:30 p.m. to 4:00 p.m. EDT, in Two White Flint North, Room 2-B5**. The summaries for each of the meetings are enclosed (Enclosures 1-4).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 5).

If you have any questions or need additional information, please feel free to contact me at (610) 337-6942 or Michelle.Beardsley@nrc.gov.

Enclosures:
As stated

cc w/ encl: Cynthia Sanders, Georgia
Organization of Agreement States
Liaison to the MRB

Distribution: DCD (SP01)
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	Amanda Tostlebe, Clerk Specialist

DISCUSSION:

The Bureau of Radiological Health (the Bureau), located within the Division of Environmental Health (the Division), administers the Iowa Agreement State Program. The Division is a part of the Department of Public Health (the Department). The Program currently regulates 174 specific licenses and approximately 200 general licenses.

The previous IMPEP review was conducted in September 2007. The review team found Iowa's performance to be satisfactory for all performance indicators reviewed. The review team made one recommendation regarding program performance and identified one good practice. Accordingly, the review team recommended, and the Management Review Board agreed, that the Iowa Agreement State Program was adequate to protect public health and safety and compatible with NRC's program.

The status of the recommendation from the 2007 Iowa Final IMPEP Report is summarized below:

The review team recommended that the State evaluate their decommissioning financial assurance program to identify and secure original financial assurance documentation from current and future licensees who are required to comply with Iowa's financial assurance requirements.

Status: The Bureau evaluated all of their licenses and acquired original, up to date financial surety documentation, as required. The surety instruments are properly secured in a safe. New licenses are evaluated for financial assurance need, prior to issuance. This recommendation should be verified and closed at the next IMPEP review.

Topics covered at the meeting included:

Program Strengths: The experienced, dedicated staff is the most notable strength of the program. The two technical staff members and the support staff member are able to perform a commendable amount of work that is comparable to an Agreement State with four or five program staff members. The Bureau has excellent communications between staff members and has streamlined many processes without sacrificing the quality of regulatory products or the emphasis on protection of health and safety. The staff is very knowledgeable of the status of the program. Bureau staff has a good understanding of new regulatory initiatives and the expectations. The Bureau has good managerial and financial support.

Bureau stated that inventory updates have taken several days to several weeks to get incorporated into NSTS. The Bureau also commented that the quality of data in NSTS is suspect, as there are dual entries for some sources. The Bureau indicated that they appreciated the good support they receive from NRC Region III and enjoy the good relationship and communication that they have with NRC in general. The Bureau was appreciative of NRC's funding for Agreement State training.

Staffing and Training:

As noted above, the Iowa program has two experienced technical staff members who are fully trained. During the 2007 IMPEP review, the review team noted that staffing levels did not present any performance issues affecting implementation of the Agreement State program; however, loss of a technical staff member could potentially impact the Bureau's ability to remain current on all regulatory actions. This potential vulnerability was discussed with the Division Director, who acknowledged the issue and indicated that they would assess staffing needs. The staffing vulnerability is especially important with one of the staff members considering retirement in the next few years. The State's economic woes and a State-wide hiring freeze have limited their ability to hire additional staff. The Division Director indicated that hiring another technical staff member is a priority and can hopefully be accomplished as economic conditions improve.

Program Reorganizations:

The Bureau has not experienced any program reorganizations since the previous IMPEP review and none are expected.

Changes in Program Budget/Funding:

The Bureau has a solid source of funding through a dedicated fee fund.

Materials Inspection Program:

The Bureau reported that they have not performed any inspections overdue and had no overdue inspections at the time of the meeting. The Bureau typically performs between 50 and 70 inspections per year. The Bureau has performed all initial Increased Controls inspections and is performing subsequent inspections in conjunction with the routine health and safety inspections.

The Bureau performs pre-licensing visits for all new license applicants that are unknown to the Bureau, including applicants that may hold a license from NRC or another Agreement State. NRC staff noted that this is a conservative approach to the pre-licensing guidance, but encouraged the State to continue this approach as resources allow.

licensee at the licensee's Iowa office. As Illinois did not inform the Bureau of the planned inspection, Iowa was not aware of the inspection until it was completed. As the Illinois inspector cited the licensee for issues which the Bureau felt were within Iowa' s jurisdiction, the Bureau criticized Illinois for overstepping their jurisdiction. In discussions with Illinois, NRC learned that the inspector did not follow policy when he failed to notify Iowa of the planned inspection. Illinois believed that they had jurisdiction to enter Iowa to inspect activities that the licensee performed in Illinois. NRC staff suggested that Iowa communicate with Illinois to work together so that the licensee may be properly inspected by both Iowa and Illinois.

Materials Licensing Program:

The Bureau performs approximately 100 to 120 license actions per year. License actions are kept current with no licensing backlog. The license template used for all licenses contains an "Official Use Only" marking.

Regulations and Legislative Changes:

The Bureau is up to date on all regulation amendments currently required for compatibility. The Bureau is in process of addressing two upcoming regulation amendments that are not due until November 2010 and February 2011, respectively.

Event Reporting, including Follow-up and Closure Information in NMED:

The Bureau had reported 13 events to NMED since the 2007 IMPEP review. All of the events were appropriately reported to the NRC, and were properly entered into, and updated, within NMED.

Response to Incidents and Allegations:

The Bureau 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 Bureau Chief 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:

The NRC referred one allegation to Iowa since the last IMPEP review. The allegation involved potentially improperly buried radioactive waste. The Bureau investigated the concern appropriately and in a timely fashion.

The Bureau, through a partnership with Iowa State University, has an orphan source program which allows the State to remove potentially dangerous radioactive materials from the public domain until it can be disposed of properly.

Emerging Technologies:

None noted.

Large, Complicated, or Unusual Authorizations for use of Radioactive Materials:

None noted.

State's Mechanisms to Evaluate Performance:

The Bureau has monthly staff meetings to discuss the status and quality of regulatory products. Inspectors are accompanied annually by the Bureau Chief.

Current NRC Initiatives:

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

CONCLUSIONS:

The Iowa Agreement State Program remains a strong, stable program with good management support. The technical staffing level for the Program is adequate but extremely vulnerable, as the loss of one individual (of two total) would have serious ramifications. Department managers are aware of this issue and intend to resolve the situation, when State economic conditions improve.

NRC staff recommends that the next IMPEP review to be held, as currently scheduled, in NRC Fiscal Year 2011.

DISCUSSION:

In July 2007, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the South Carolina BRH Agreement State Program's (the Program) performance to be satisfactory for all common and non-common performance indicators. Additionally, no recommendations were made by the review team regarding the Program. On October 15, 2007, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and compatible with the NRC's program.

Topics covered at the meeting included:

Program Strengths:

A well-trained, stable, and experienced staff is a major strength of the Program. The Program has also been very successful with training junior technical staff. An additional strength was meeting all of the Program goals in licensing and inspection activities during periods of increased security requirements such as Increased Controls inspections, fingerprinting, and implementation of the National Source Tracking System (NSTS).

Program Weaknesses:

The BRH staff did not identify any current weaknesses in the radioactive materials program, but the staff did note that continued budget cuts may result in Program weaknesses in the future. Due to State budget issues, the Program staff were subject to five furlough days (i.e., days off without pay) from the months of January to May 2009. The staff did not encounter any programmatic or health and safety issues as a result of the furlough days.

Feedback on the NRC's Program:

The Program discussed past communication issues associated with receipt of NRC letters and electronic mail. This item was addressed during previous contacts between BRH management, FSME, and the Region I RSAOs. BRH management stated that there has been significant improvement in this area. The Program commented that the overall relationship with the NRC is good. In particular, the Program noted that the NRC funding of training is greatly appreciated.

Support for staff training exists in the Program. BRH welcomed the NRC's revised policy on funding training for Agreement States. Program staff has attended NRC and other training courses, including the NRC's Security Systems and Principles Course. BRH noted that other activities that are not specifically training, such as attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization:

The Program is administered by the Division of Radioactive Materials which is in the Bureau of Radiological Health (Bureau). The Bureau is part of the Department of Health and Environmental Control. In addition to the Program, the Bureau is responsible for radiation producing machines, radiological emergency response and environmental radiation. There have been no changes to the Program's organization since the 2007 IMPEP review.

Program Budget/Funding:

The Bureau Chief stated that the radioactive materials program is adequately funded at this time. The last fee update for the Bureau occurred in 2003. The Bureau Chief may propose a fee increase for Fiscal Year 2010, which begins next July. Senior management has committed to funding the Agreement State program (i.e., will do what is necessary to keep the Program funded.)

Inspection/Licensing Programs:

BRH has approximately 400 radioactive materials licenses. The Program's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules. The Program has completed the first round of Increased Controls (IC) inspections and continues to conduct IC inspections.

The Program had no licensing actions that were overdue. The Program is aware of the requirement for "pre-licensing" visits. The Program hand delivers all new licenses and will not issue a license if the information gathered during the pre-licensing visit does not match the information provided in the license application.

Regulations:

The Program has no overdue regulations. Responsibility for drafting regulations is now being split between BRH and the Division of Waste Management in the Bureau of Land and Waste

are included in the State's NMED entries.

Response to Incidents and Allegations:

BRH continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for the potential effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. One allegation was referred from NRC to the program since the 2007 IMPEP review.

Significant Events and Generic Implications:

BRH reported that no significant events have occurred since the 2007 IMPEP review. No generic implications have been identified.

Current State Initiatives:

BRH has started to electronically scan all documents/files related to the x-ray program and will begin scanning all documents related to the radioactive materials program in the near future.

Emerging Technologies:

None noted.

Large, Complicated, or Unusual Authorizations for Use of Radioactive Material:

BRH has received a license amendment request for a new Perfexion gamma knife and has its first new radiography license which had to incorporate Increased Controls requirements prior to license issuance. The Program has not received any unusual requests for use of radioactive materials.

State's Mechanisms to Evaluate Performance:

The Division does not have a formal mechanism to evaluate program performance. Since all licensing and inspection information is tracked on databases and spreadsheets, the Division Director periodically reviews the status of Program activities. The Division holds monthly staff meetings and monthly updates on the status of licensing actions.

The South Carolina radioactive materials program continues to be a strong, stable Agreement State program. The Program staff is experienced and well trained. The Program has stable funding; however, budget issues continue to be a concern. With the increased focus on the safety and security of radioactive material, adequate program resources have become much more critical and the State is closely watching for the need to increase staffing when necessary.

NRC staff recommends that the next IMPEP review should be conducted, as currently scheduled, in FY 2011 (tentatively July 2011).

DISCUSSION:

The South Carolina Agreement State program is located in the Department of Health and Environmental Control (DHEC). Within the DHEC, the Infectious and Radioactive Waste Management Section of the Division of Waste Management (DWM) in the Bureau of Land and Waste Management (Bureau), is responsible for the oversight of the Barnwell Low-Level Radioactive Waste (LLRW) Disposal Site and approximately 21 other licenses for waste-related operations. Within the DHEC, the Bureau of Radiological Health (BRH) administers the radioactive materials program which has approximately 400 licenses.

In July 2007, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the South Carolina DHEC Agreement State Program's (the Program) performance to be satisfactory for all common and non-common performance indicators. Additionally, no recommendations were made by the review team regarding the Program. On October 15, 2007, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and compatible with the NRC's program.

Topics covered during the meeting included:

Program Strengths:

A well-trained, stable, and experienced staff is a major strength of the Program. Additional strengths of the Program include involvement with Department of Homeland Security initiatives; maintaining an active role in the Conference of Radiation Control Program Directors; knowledge of Department of Transportation regulations which contributes to enhancement of the inspection program; participation in the Sealed Source and Device Working Group; and knowledge of depleted uranium issues.

Program Weaknesses:

The DWM staff noted that a potential weakness of the Program is that several staff members are close to retirement age. The staff is addressing plans for knowledge management transfer in anticipation of the potential effects of staff retirements.

The Program has been fully staffed for several years and consists of five technical staff, two administrative staff, and two supervisors, including the DWM Director. The Program noted that because the workload has decreased since the closure of the Barnwell radioactive waste disposal site to non-Compact licensees in June 2008, Program resources have been shifted from the radioactive waste program to Department of Energy activities. The Program expects to decrease staff by one full-time equivalent during the summer of 2010.

Organization:

The Bureau has reorganized since the 2007 IMPEP review. There have been no changes to the Program's organization since the 2007 IMPEP.

Program Budget/Funding:

The DWM Director stated that the radioactive waste program is fee-based and is adequately funded at this time. Licensee fees were increased by 50% since the last IMPEP (except for Barnwell fees which increased greater than 100%). The Program may reduce the fees for Barnwell in 2010. Fees generated from transportation permits have decreased significantly recently. The Program requires transporters to obtain permits to transport radioactive waste into or within the State.

Inspection/Licensing Programs:

DWM has 22 specific licenses involving radioactive waste disposal, waste processing, waste research and development, and sites in the process of decommissioning. Six of these licenses are NORM licenses for water treatment systems. The Program's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules.

The Program had no licensing actions that were overdue. The Program is aware of the requirement for "pre-licensing" visits. The Program hand delivers all new licenses and will not issue a license if the information gathered during the pre-licensing visit does not match the information provided in the license application. The Barnwell disposal site license renewal is still under appeal.

Response to Incidents and Allegations:

DWM continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for the potential effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. DWM has lead responsibility for responding to radiation alarms at metal recycling facilities and solid waste facilities. The Program staff is cognizant of NMED reporting requirements. There were no allegations referred from NRC to the program since the 2007 IMPEP review.

Significant Events and Generic Implications:

DWM reported that no significant events have occurred since the 2007 IMPEP review. No generic implications have been identified.

Status of Low-Level Radioactive Waste Disposal Program:

DWM staff members perform semi-annual inspections at the Barnwell Low-Level Radioactive Waste Disposal Site. DWM staff performs weekly inspections of disposal site status and operations. An onsite DWM inspector performs a separate weekly inspection of Phase I closure activities at the Barnwell site and inspects every shipment arriving at Barnwell. Recent activities at Barnwell include Phase I closure and capping of trenches and demolition of five onsite buildings. Extent of contamination studies of groundwater and surface water continue to be performed.

Current State Initiatives:

The DWM staff has been actively involved in engaging public participation in groundwater studies at the Barnwell disposal site.

Emerging Technologies:

None noted.

Large, Complicated, or Unusual Authorizations for Use of Radioactive Material:

The Program received one licensing action in January 2009 for a new mixed waste facility which will require a radioactive waste license and a RCRA permit. This action is currently under review. The Program has not received any unusual requests for use of radioactive materials.

NRC staff discussed ongoing initiatives with the DWM staff. These included upcoming rulemaking, pre-licensing guidance, fingerprinting orders, national source tracking system, web-based licensing, generally-licensed devices, website for complex decommissioning sites, and enhancements to the FSME website.

CONCLUSIONS:

The South Carolina radioactive materials program continues to be a strong, stable Agreement State program. The Program staff is experienced and well trained. The Program staff is addressing plans for knowledge management transfer in anticipation of the potential effects of staff retirements.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2011 (tentatively July 2011).

DISCUSSION:

During the 2007 Integrated Materials Performance Evaluation Program (IMPEP) review of the Rhode Island Agreement State Program, the review team found the State's performance satisfactory for five performance indicators and satisfactory, but needs improvement, for one performance indicator. Two recommendations were made by the IMPEP review team. On January 8, 2008, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Rhode Island Agreement State Program. The MRB found the Rhode Island program adequate to protect public health and safety, and compatible with the NRC program.

The status of the State's actions to address the open recommendation follows:

1. The review team recommended that Rhode Island take appropriate measures to conduct Priority 1, 2 and 3 inspections and initial inspections in accordance with the inspection priority schedule in IMC 2800.

   Status: The Program continues to have difficulty in completing inspections in accordance with the IMC 2800 inspection priority schedule. See the Inspection Program Section of this meeting summary. This recommendation remains open and should be evaluated at the next IMPEP review.

2. The review team recommended that Rhode Island develop a written documentation of its radioactive materials licensing program to ensure that a memorialized program exists to train and transfer knowledge to future, as well as current, staff.

   Status: The Program has not taken any action on this recommendation. The current Acting Program Supervisor (Ms. Horibin) noted the need to develop a procedures manual, and stated that work on a manual will begin in the future. This recommendation remains open and should be evaluated at the next IMPEP review.

Feedback on the NRC's Program:

The Acting Program Supervisor commented that both the overall relationship and communication with the NRC are good and welcomed the NRC funding of training. However, the Acting Program Supervisor commented that, at times, various NRC actions, such as proposed rule making, are sent to the States without sufficient time to respond with comments back to the NRC. Rhode Island would like more time for review and comment on NRC documents. The Acting Program Supervisor also noted that Rhode Island licensees find the National Source Tracking System (NSTS) cumbersome to use, and most licensees are entering data into the system via paper, rather than electronically. The Program does not yet have access to the NSTS system.

Agreement State Program Staffing and Training:

The Program staff consists of five individuals including the supervisor. There are two staff vacancies. Since the previous IMPEP the Program Supervisor retired, and a member of the staff has been made the Acting Supervisor. This created one of the staff vacancies. Another member of the staff transferred to another part of the State government. Although there are two staff vacancies, the Program is currently staffed with 1.75 FTE. Ms. Horibin stated that at least three FTE were necessary to adequately staff the Program. Both Mr. Rusin and Ms. Horibin stated their commitment to filling the two staff vacancies and making Ms. Horibin the permanent Program Supervisor.

Support for staff training exists in the Program. Rhode Island welcomed the NRC's revised policy on funding training for Agreement States. Program staff has attended NRC and other training courses, including the NRC's Security Systems and Principles Course. The Acting Program Supervisor noted that other activities that are not specifically training, such as attendance at professional organization meetings, also provide valuable opportunities for knowledge sharing. The Acting Program Supervisor noted the lack of cross training among the staff and plans to initiate cross training to strengthen the Program.

Organization:

Since the last IMPEP review the Rhode Island Agreement State Program has been moved under the Office of Facilities Regulation within the Division of Environmental and Health Services in the Rhode Island Department of Health.

Inspection Program:

The Program's inspection frequencies are at least as frequent as NRC's. Of a total of eight inspections, one Priority 1 inspection, three Priority 2 inspections, and two Priority 3 inspections were overdue by approximately three to six months. There were no overdue inspections for 2008, but during 2009 the Program began to get behind in performing inspections due to staff leaving the program and other staff issues. Mr. Rusin stated that management is aware of the importance of inspection program schedules; plans call for the overdue inspections to be completed by spring of 2010.

The Program has eight licensing actions that were in the process of timely renewal, some for as long as a year. Of all the activities within the Program, renewals are given the lowest priority. Ms. Horibin stated that the number of licenses has remained approximately constant over the last several years at about 50 to 60 licenses. Ms. Horibin also stated that the Program is aware of the requirement for "pre-licensing" visits, and pre-licensing visits are conducted on a case-by case-basis. The Program averages about 20 to 25 licensing actions per year.

Regulations and Legislative Changes:

There have not been any legislative changes or proposals that have affected the Program. Rhode Island has two regulations that are overdue.

The following regulations are overdue:

- "Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments," 10 CFR Part 71 amendment (69 FR 3697), that was due for Agreement State implementation on October 1, 2007. (RATS ID 2004-1)

- "Minor Amendments," 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendment (71 FR 15005), that was due for Agreement State implementation on March 27, 2009. (RATS ID 2006-1)

Event Reporting:

The Program communicates reportable incidents to the NRC Operations Center and Region I when appropriate in prompt manner. Since the last IMPEP review in October 2007, one event was reported to the NRC.

The Program's priority initiative is maintaining the program by filling staff vacancies and responding to the recommendations made during the last IMPEP review.

Mechanisms to Evaluate Performance:

Mr. Rusin stated that at the present time there are no self assessment programs in place to evaluate the performance of the Program. However, Mr. Rusin stated that he is new to having responsibility for the Program and still learning about the Program, but he will implement some type of self assessment.

CONCLUSIONS:

Rhode Island continues to maintain their Agreement State Program during a period of significant budget constraint within the State. Even though the Program is fee funded, other State budget constraints, including hiring freezes and pay cuts affect the Program. While the Program has two vacancies, the Program is adequately staffed. The effort to reduce the inspection backlog continues. With a few exceptions, the regulations are up to date.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2012 (tentatively November 2011). Staff also recommends that a Periodic Meeting be held in approximately nine months in order to follow up on the status of the Rhode Island Program.

Agenda for Management Review Board Meeting
March 1, 2010, 2:30 p.m. - 4:00 p.m. EST, TWFN-2-B5

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. (Agreement State Liaison is Cynthia Sanders of Georgia.)

3. Discussion of Periodic Meetings:

   a. Iowa
      (August 25, 2009) – ML092610714 – Lynch/McCraw

   b. South Carolina
      (August 4 & 5, 2009) – ML091900170 – Janda/Orendi

   c. Rhode Island
      (December 2, 2009) – ML100190147 – Kottan/Orendi

4. Adjournment

Invitees:

Martin Virgilio, FSME	Donna Janda, Region I
Bradley Jones, OGC	James Kottan, Region I
Charles Miller, FSME	Jim Lynch, Region III
Elmo Collins, Region IV	Monica Orendi, FSME
Cynthia Sanders, GA	Aaron McCraw, FSME
Melanie Rasmusson, IA	Michelle Beardsley, FSME
Aaron Gantt, SC	Karen Meyer, FSME
Raymond Rusin, RI	Terrence Reis, FSME
Richard Haynes, SC	Duncan White, FSME
Rob Lewis, FSME	Mike Franovich, OEDO

Enclosure 5