

April 9, 2010

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

FROM: Charles L. Miller, Director */RA C. Carpenter for/*
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)

The purpose of this memorandum is to update you on the status of the Agency's actions in response to the recommendations of the subject line audit. I offer the following status updates on each of the recommendations:

Recommendation 1

Develop a mechanism for conducting self-assessments and capturing lessons learned for IMPEP on a regular basis.

Status

The first self-assessment of the Integrated Materials Performance Evaluation Program (IMPEP) is underway and is expected to be completed by July 2010. To date, the self-assessment team has evaluated the IMPEP Team Member Training and audited the preparations and on-site portion of an IMPEP review. The self-assessment team also plans to review IMPEP policies and procedures, interview U.S. Nuclear Regulatory Commission (NRC) and Agreement State managers and staff, and develop a procedure for future self-assessments.

Recommendation 2

Develop formal procedural guidance for identifying what information is needed about Agreement State programs and materials licensees in the event that an Agreement State is no longer capable of adequately performing its function of protecting public health and safety for an indeterminate period of time.

Status

Staff has evaluated the Office of Federal and State Materials and Environmental Management Programs (FSME) State Agreements (SA) Procedures and determined that FSME Procedure

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SA-114, "Suspension of a Section 274b. Agreement," is the most appropriate place to include the identified information. Staff is in the preliminary stages of revising this procedure. The estimated date for completion of the revision is September 2010.

Recommendation 3

Develop a set of procedures that standardizes communications from NRC to the Agreement States.

Response

In your December 10, 2009, memorandum to R. William Borchardt, Executive Director for Operations, you indicated that the Office of the Inspector General (OIG) will consider this recommendation closed when the agency submits, and OIG reviews, the revised FSME Procedure AD-200, "Format for FSME Letters." Staff continues to work on the revisions to FSME Procedure AD-200. The original estimated completion date has been modified due to higher priority activities. The new estimated completion date for the revision to AD-200 is June 2010.

Recommendation 4

Develop a standardized data collection process that can be used as the basis of an information sharing tool on a national level.

Response

Staff has engaged the Office of the General Counsel (OGC) in discussions on the legality of collecting Agreement State information on bans against individuals from using radioactive materials, revocations and suspensions of radioactive materials licenses, enforcement actions taken against licensees, and allegations involving radioactive materials. OGC ruled that, although NRC has relinquished its regulatory authority in the Agreement States, NRC does legally have a right to collect the above listed information if NRC determines it is necessary to collect the information in order to fulfill its statutory oversight role. FSME staff is evaluating the benefits of the collection of this information versus the NRC's and Agreement States' annual resource burdens for providing, analyzing, and sharing the information.

A mandatory requirement for collection of this information from the Agreement States would require Commission consensus and a vision to the Commission's Policy Statement on the adequacy and compatibility of Agreement State programs. Also, staff would be required to obtain a new or modify an existing Office of Management and Budget information collection clearance. A voluntary sharing of the information would have to yield to State privacy laws, specifically allegation information and actions taken against individuals. Implementation of any data collection for this information, whether mandatory or voluntary, could take as long as 5 years to institute. Staff has drafted a questionnaire for the Agreement States to obtain their input on their willingness to share certain information, estimates of the annual burden to share the information, and the legality of sharing the information from the State perspective. An FSME manager discussed the questionnaire with the Organization of Agreement States (OAS) Executive Board at their meeting in early April 6, 2010. It was approved in the meeting that the

questionnaire will be sent to all Agreement States Radiation Control Program Directors via a letter in April 2010.

Recommendation 5

Revise the applicable IMPEP procedure(s) to include a review of Agreement State events that are not recorded in NMED for an analysis of whether they should have been included in NMED.

Response

On February 18, 2010, FSME issued a revised FSME Procedure SA-105, "Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities." Revisions to the procedure specifically request IMPEP team members to perform a smart sample of incidents that were not reported to NRC or the Nuclear Material Events Database (NMED) to make sure that the events were appropriately not reported to NRC or included in NMED. The revised procedure can be found on FSME's external website at: <http://nrc-stp.ornl.gov/procedures/sa105.pdf>. FSME considers this recommendation closed.

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