UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

October 26, 2010

Debra Shults, Director
Division of Radiological Health
Department of the Environment and Conservation
L&C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532

Dear Ms. Shults:

A periodic meeting with your Office was held on July 28, 2010. The purpose of the meeting was to review and discuss the status of the Tennessee Department of the Environment and Conservation's Agreement State program. The NRC was represented by John Kinneman, Michelle Beardsley, and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (610) 337-5371, or email to Donna.Janda@nrc.gov to discuss your comments.

Sincerely,

/RA/

Donna M. Janda
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF RADIOLOGICAL HEALTH

DATE OF MEETING: July 28, 2010

NRC Attendees	Tennessee Division of Radiological Health Attendees
John Kinneman, Region I, Director, DNMS	Debra Shults, Acting Director
Donna Janda, Region I RSAO	Johnny Graves, Manager, Licensing, Registration, and Planning
Michelle Beardsley, FSME , Health Physicist	Billy Freeman, Manager, Inspection and Enforcement
	Beth Murphy, Supervisor, Standards Development
	Eddie Nanney, Health Physicist

DISCUSSION:

In April 2008, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the Tennessee Department of Environment and Conservation (DEC) Agreement State Program's (the Program) performance to be satisfactory for four performance indicators and satisfactory, but needs improvement, for the indicators Technical Staffing and Training, Compatibility Requirements, and Sealed Source and Device Evaluation Program. Four recommendations were made by the review team regarding the Program. On July 15, 2008, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate, but needs improvement, to protect public health and safety and compatible with the 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 four years and that a periodic meeting be held in approximately two years from the date of the IMPEP.

This summary describes that periodic meeting.

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

1. The review team recommends 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.

   Current status: Since the 2008 IMPEP review, six employees left the Division and three employees were hired by the Division. The Program Director recently retired and has returned to the Program as a 120-day rehired annuitant. The Deputy Director is currently serving as the Acting Program Director. The Program currently has 37 individuals with various degrees of involvement in the radioactive materials program, including 27 inspectors, five license reviewers, and one contractor. The Division expects the freeze to be lifted in the near future on two of the five open positions which were frozen at the time of the 2008 IMPEP review. Although still understaffed, the Program is not experiencing any backlogs in licensing or inspection activities.

   This recommendation remains open and should be evaluated at the next IMPEP review.

ENCLOSURE

2. The review team recommends 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.

   Current Status: The Program has implemented the use of training records for each inspector to document qualification/approval for the different types of licenses after completion of training courses and supervisory accompaniments. Copies of these records are maintained in the Central Office as well as the Regional Office in which the inspector is based. In addition, the Central Office maintains records for license reviewer qualifications, including documentation of training courses and on-the-job training for license reviewers for the different types of licensing actions.

   This recommendation remains open and should be evaluated at the next IMPEP review.

3. The review team recommends 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.

   Current Status: The Program's current training policy includes on-the-job training and security training to address current and future needs of the staff. Both license reviewers and inspectors have attended the NRC security training course.

   This recommendation remains open and should be evaluated at the next IMPEP review.

4. The review team recommends that the State 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.

   Current Status: In order to ensure thoroughness and consistency with ANSI standards and existing guidance, the Program's SS&D reviewers use a review checklist based on the checklist found in NUREG-1556, Volume 3, for all SS&D licensing actions.

   This recommendation remains open and should be evaluated at the next IMPEP review.

TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

A well-trained, stable, and experienced senior staff with 10 years or more of experience is a major strength of the Program. According to Program management, the technical staff has developed unique skill sets in licensing and inspection of the State's complex waste processing licensees and in external communications for dealing with media and public interest in the Bulk Survey for Release program, waste processing and blending issues, and the Nuclear Fuel Services site. The Program receives good management and administrative support.

Program Weaknesses

Program management identified low salaries and the absence of pay raises for the past 3 years as a weakness of the Program because of the difficulty in retaining technical staff once they are trained. In addition, field inspection staff members do not directly report to the Central Office. Instead they report to Field Office Directors, which makes it difficult to maintain a sense of rapport within the Division's radioactive materials program.

Feedback on the NRC's Program

The Program staff commented that the overall relationship with the NRC is good. The Program appreciates NRC funding of qualification training courses. The Program staff noted that because NRC sponsors only one or two medical courses each calendar year, it can be difficult for State staff to be accepted into the courses due to the limited number of spaces available. In addition, the Program would appreciate more emphasis on regulation of radioactive material and health physics implications of medical modalities in the medical courses.

Agreement State Program Staffing and Training

Program staffing, turnover and vacancies are discussed in Recommendation 1 above.

Support for staff training exists in the Program. New technical staff members are currently in the qualification process and attending NRC courses as available. Program staff members attend NRC and other training courses and seek alternate resources for training such as in-house and on-the-job training.

Organization

The Program is administered by the Division of Radiological Health (the Division), which is part of the Department of the Environment and Conservation. The Division is comprised of the Office of the Director and four Sections: Administrative, Inspection and Enforcement, Licensing/Registration/Policy Services, and Technical Services sections. Inspection, enforcement and incident response activities are conducted primarily through four field offices located in Nashville, Chattanooga, Memphis, and Knoxville. All other Program activities are conducted primarily through the Central Office in Nashville.

Program Budget/Funding

Fees from radioactive materials licensees are placed into the Environmental Protection Fund (EPF). Licensee fees have not been increased since 2001 and cannot be raised if program funding is cut. The State legislature has taken approximately one half of the carryover funds from the 2007-2008 fiscal year and it is unknown if the carryover funds from the 2008-2009 fiscal year will be decreased. The Program is attempting to raise licensee fees by approximately 20%. Rulemaking and public hearings have been held on the issue but the Program cannot move forward until it is known if the EPF will be decreased.

Inspection/Licensing Programs

The Program has approximately 600 radioactive materials licenses. The Program's inspection frequencies are at least as frequent as NRC's. No inspections were overdue at the time of this meeting. Inspections which were overdue at the time of the 2008 IMPEP have been completed. 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 in conjunction with the routine safety inspection.

The Program maintains a database for tracking licensing actions and did not have a licensing backlog at the time of this meeting. The Program is aware of the requirement for "pre-licensing" visits. The Program issues licenses with a ten-year renewal requirement.

Regulations

Since the April 2008 IMPEP, the State submitted eight final regulation packages and two proposed regulation packages to NRC for a compatibility review to address the following amendments:

- The 30.35 portion of "Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]," 10 CFR Parts 30 and 40 amendment (58 FR 39628), that was due for Agreement State implementation on October 25, 1996.

- The 30.35 portion of "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendment (60 FR 38235), that was due for Agreement State implementation on November 24, 1998.

- The 30.35 portion of "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," 10 CFR Parts 20, 30, 40, 61, and 70 amendment (61 FR 24669), that was due for Agreement State implementation on June 17, 1999.

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, and 35 amendment (67 FR 20249), that was due for Agreement State implementation on October 24, 2005.

- "Financial Assurance for Materials Licensees," 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327), that was due for Agreement State implementation on December 3, 2006.

- "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.

- "Medical Use of Byproduct Material – Recognition of Specialty Boards," 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008.

- "National Source Tracking System," 10 CFR Part 20 amendment (71 FR 65685, 72 FR 59162), that was due for Agreement State implementation on January 31, 2009.

- "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.

- "Medical Use of Byproduct Material – Minor Corrections and Clarifications," 10 CFR Parts 32 and 35 amendment (72 FR 45147 and 72 FR 54207), that is due for Agreement State adoption by October 29, 2010.

The State will need to address the following NRC amendments in the future:

- "Requirements for Expanded Definition of Byproduct Material," 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendment (72 FR 55864), that is due for Agreement State adoption by November 30, 2010.

- "Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements," 10 CFR Parts 30, 31, 32, and 150 amendment (72 FR 58473), that is due for Agreement State adoption by December 17, 2010.

- "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.

- "Medical Use of Byproduct Material – Authorized User Clarification," 10 CFR Part 35 (74 FR 33901), that is due for Agreement State adoption by September 28, 2012.

Event Reporting

The Program communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a prompt manner. The Program has reported five events to the NRC since the 2008 IMPEP review.

Response to Incidents and Allegations

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for the potential effect on public health and safety. Staff members are dispatched to perform onsite investigations when necessary. The Program is aware of the need to maintain an effective response to incidents and allegations and has procedures in place to ensure appropriate follow up action is taken. The Program conducts investigations of allegations received by the Program and follows up with the concerned individuals regarding the outcome of the investigations.

Significant Events and Generic Implications

The Program staff and NRC discussed one significant event involving a Tennessee licensee which occurred at a South Carolina hospital in December 2009. The event involved the rupture of a sealed source resulting in the contamination of several areas in the Radiation Oncology Department at the hospital and in the vehicle of an employee of the TN licensee who packaged the source. Both Tennessee and South Carolina have conducted follow up investigations.

The Program is currently evaluating possible generic implications from several recent events in other jurisdictions involving stuck shutters on fixed gauges distributed by a Tennessee licensee. Subsequent to this meeting, the Program has been working with FSME to determine if any future actions regarding this issue are warranted.

Sealed Source and Device Evaluation Program

Since the 2008 IMPEP review, the program has received one new application and five amendment requests for SS&D certificates. The Program has five individuals who perform SS&D evaluations.

Current State Initiatives

The Bulk Survey for Release Program is being revised to ensure consistency in the modalities between the four licensees in this State Program.

Emerging Technologies

The Program noted that an amendment which was introduced in the State Senate to ban blending of radioactive waste did not pass in Committee. The State has not received any requests to license blending activities.

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

Since the 2008 IMPEP review, the Program has licensed activities involving pyrolysis of non-resin products and processing of steam generators.

State's Mechanisms to Evaluate Performance

The Program tracks inspection due dates on a Program database. Program management reviews the inspection due list on a monthly basis to ensure timeliness of inspections. Program managers review inspection reports. Field Office managers hold staff meetings on a quarterly basis.

Certain licensing actions are reviewed by Program managers. Licensing actions signed by junior reviewers receive several levels of review before the license is issued. If a licensing action is not worked on within 60 days of receipt of the action, the fee is returned to the applicant/licensee.

The Division holds a 2-3 day annual staff meeting for both Central Office and Field Office staff to discuss items of mutual importance and to conduct training sessions as needed.

Summary

The Tennessee radioactive materials program continues to be a strong, stable Agreement State program. The Program staff is experienced and well-trained. With the increased focus on the safety and security of radioactive material, program resources have become much more critical and the State is closely monitoring the need to increase staffing when necessary.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2012 (tentatively April 2012).