

November 15, 2010

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

FROM: Charles L. Miller, Director */RA by Scott Moore 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 the Integrated Materials Performance Evaluation Program (IMPEP) on a regular basis.

Status

The first self-assessment of the IMPEP was completed and a report was issued to Robert J. Lewis, Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs (FSME) on July 22, 2010 (ML102030209). Appendix C of the report is a draft procedure for future self-assessments. Using this Appendix as a template, staff plans to finalize a procedure for future self-assessments by September 30, 2011.

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.

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Status

Staff has re-evaluated the FSME State Agreements (SA) Procedures and determined that FSME Procedures SA-112, "Emergency Suspension of a Section 274b. Agreement" and SA-114, "Suspension of a Section 274b. Agreement," are the most appropriate places to include the identified information. Staff has drafted revisions to these procedures and expects these two documents to go out for comment both internally within the U.S. Nuclear Regulatory Commission (NRC) and externally to stakeholders in December 2010. The current estimated date of completion for both documents is March 2011.

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. W. 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 has finished revisions to FSME Procedure AD-200 and is currently in the process of submitting the procedure to OIG by November 15, 2010. With the completion of OIG's review of the procedure, we consider this recommendation to be closed.

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 a policy change to the "Commission's Policy Statement on the Adequacy and Compatibility of Agreement State Programs" (62 FR 4517). 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 five years to institute. On April 16, 2010, staff issued a questionnaire to the Agreement States in order 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 (RCPD-10-006, ML100750102). As of October 2010, 18 of the 37 Agreement States had responded to the questionnaire. These 18 Agreement States represent approximately 61 percent of the licensees located in Agreement States. Staff is currently in the process of reaching out to Agreement States who have not yet provided a response in hopes of encouraging more Agreement States to respond. Staff then plans to analyze all of the data collected and provided the OIG with a proposed path forward with regards to this recommendation in early 2011.

Recommendation 5

Per OIG memorandum dated May 24, 2010, this recommendation is closed.

cc: Michael F. Weber, DEDMRT

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Recommendation 5

Per OIG memorandum dated May 24, 2010, this recommendation is closed.

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DISTRIBUTION: G2010033/EDATS: EDO-2010-0436

Ref.: WITS200900103/EDATS: EDO-2009-0296; WITS200900104/EDATS: EDO-2009-0297

WITS20090105/EDATS: EDO-2009-0298; WITS20090106/EDATS: EDO-2009-0299;

WITS20090107/EDATS: EDO-2009-0300

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