

March 7, 2011

MEMORANDUM TO: Michael F. Weber
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 Reactor and Materials Rulemaking
Office of the General Counsel

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Cynthia D. Pederson, Deputy Regional Administrator
Region III

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: APRIL 5, 2011 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of periodic meetings held with the Rhode Island and Kentucky Agreement State Programs has been scheduled for **Tuesday April 5, 2011 from 1:00 p.m. to 3:00 p.m. EDT, in Two White Flint North, Room 2-B5**. The summaries for each of the meetings are enclosed (Enclosures 1 and 2).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 3).

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.: Jennifer Opila, CO
Organization of Agreement States
Liaison to the MRB

MRB Members

Distribution: DCD (SP01)

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
RHODE ISLAND OFFICE OF FACILITIES REGULATIONS'
RADIOLOGICAL HEALTH PROGRAM

DATE OF MEETING: October 27, 2010

NRC Attendees	Rhode Island Radiological Health Program Attendees
Donna Janda, Region I RSAO	Adelita Orefice, Executive Director, Division of Environmental and Health Services Regulation
Monica Orendi, FSME, Health Physicist	Raymond Rusin, Director, Office of Facilities Regulations
	Dennis Klaczynski, Radiation Control Specialist
	William Dundullis, Risk Assessment Toxicologist
	Charma Waring, Radiation Control Specialist

DISCUSSION:

During the 2007 Integrated Materials Performance Evaluation Program (IMPEP) review of the Rhode Island Agreement State Program (the Program), the review team found the State's performance satisfactory for five performance indicators and satisfactory, but needs improvement, for one performance indicator, Status of Materials Inspection Program. The IMPEP review team made two recommendations regarding the Program. On January 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 to protect public health and safety and compatible with the NRC's program. On December 2, 2009, a periodic meeting was held to discuss the status of the Rhode Island Agreement State Program and the recommendations made during the 2007 IMPEP. On March 1, 2010, the MRB met to discuss the results of the periodic meeting. The MRB concluded that the next IMPEP review of the Program should take place as currently scheduled in Fiscal year 2012 and that a periodic meeting should be held in approximately nine months to follow up on the status of the Rhode Island Program.

This summary describes that periodic meeting.

The following is a status summary of the two recommendations that were identified in the 2008 Rhode Island final IMPEP report:

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

Current status: Since the 2009 periodic meeting, one Priority 1 inspection was overdue. This inspection was due in August 2010; however, at the time of this meeting, the licensee was in the process of converting their radiography cell, which had previously been used as a temporary job site, into a fixed radiography cell which would then change the inspection priority to every two years (Priority 2).

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

2. The review team recommends that the State 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.

Current Status: Due to other Program priorities, the Program staff has not completed actions related to this recommendation. Staff members are currently reviewing NRC, State and site-specific procedures to incorporate into written documentation for the licensing program.

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

TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

The Program is now situated in the Office of Facilities Regulations, which according to the Program staff, can help identify issues in the radioactive materials program when issues are identified in other areas (e.g., X-Ray Program). It also allows for a more integrated approach and sharing of information between Programs. A well-trained and experienced staff is a major strength of the Program. Another strength of the Program is that, due to the size of the Program and the geographical size of the State, Program staff members have a significant amount of contact with licensees.

Program Weaknesses

Program management and staff identified State budget issues and broad-based policies (e.g., hiring freeze, purchasing freeze) as areas which can affect the Program.

Feedback on the NRC's Program

The Program staff commented that the overall relationship with the NRC is good. The Program staff appreciates NRC funding of qualification training courses and would support the return of NRC funding of the five-week health physics training course. The Program staff suggested that other courses could be scheduled on a less frequent basis (such as every other year) to offset the cost of the five-week course. The Program staff is currently considering using a web-based training class to satisfy a portion of the five-week health physics course.

One Program staff member has been issued credentials for accessing the NSTS database. Two additional staff members are in the process of applying for their credentials.

Agreement State Program Staffing and Training

The Program has four technical staff members who dedicate a total of 2.0 FTE to the radioactive materials program. One supervisor position is currently vacant, one staff member is on a leave of absence and one individual has returned to the technical staff since the 2009 Periodic Meeting.

Support for staff training exists in the Program. Program staff members can attend out-of-state

training courses, including NRC courses, when training is necessary to conduct their work. However, some out-of-state travel has been denied such as attendance at the New England Radiological Health Committee Annual Meeting which was held in Portland, Maine this year.

Organization

The Program is administered under the Office of Facilities Regulations within the Division of Environmental and Health Services in the Rhode Island Department of Health. There have been no organizational changes since the 2009 Periodic Meeting.

Program Budget/Funding

Mr. Rusin stated that the Program is adequately funded with licensee fees placed into a restricted fund. There have been no fee increases since the 2007 IMPEP review. Although the Program is adequately funded, the Program is subject to the overall budget issues that are affecting the State and the Department of Health in particular. The staff has not been subject to furloughs; however, the staff has taken a 10% pay cut over the last two fiscal years.

Inspection/Licensing Programs

The Program has approximately 50 radioactive materials licenses. The Program's inspection frequencies are at least as frequent as NRC's. One Priority 1 inspection was overdue at the time of this meeting (see Recommendation 1 discussed previously in this report.)

It was noted during the previous Periodic Meeting that the Program had eight licensing actions in the process of timely renewal, some for as long as one year. According to the Program staff, seven of these actions have been reviewed and requests for additional information have been sent to the licensees. The Program staff conducts pre-licensing site visits on a case-by-case basis.

Regulations

There have not been any legislative changes or proposals that have affected the Program since the last Periodic Meeting. As of the date of this meeting, 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)

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

- “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. (RATS ID 2007-1)
- “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. (RATS ID 2007-3)
- “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. (RATS ID 2007-2)
- “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. (RATS ID 2008-1)
- “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. (RATS ID 2009-1)

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 one event to the NRC since the 2009 Periodic Meeting.

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 and follows up with the concerned individuals regarding the outcome of the investigations. Allegor identity is protected under Rhode Island law.

Current State Initiatives

The Program’s priority initiative is maintaining the radioactive materials program by filling staff vacancies and responding to the recommendations made during the most recent IMPEP.

Mr. Rusin stated that the Program staff is evaluating whether changes to the manner in which the Program conducts its business are necessary due to the Health Care Reform Act.

State’s 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. Mr. Rusin stated that he plans to incorporate the assessment of the radioactive materials program into the Office of Facilities Regulations' assessments. The Program uses spreadsheets with inspection/licensing assignments to monitor workloads.

Summary

Rhode Island continues to maintain their Agreement State Program during a period of budget constraint within the State. Even though the Program is funded by licensee fees, other State budget constraints, including hiring freezes and pay cuts affect the Program. Although the program Supervisor position has been vacant for approximately 18 months, the Program is adequately staffed. The inspection backlog has been reduced and, 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 October 2011).

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES'
RADIATION HEALTH PROGRAM

DATE OF MEETING: February 10, 2011

NRC Attendees	Kentucky Department For Public Health
Monica Orendi, RSAO, Region I	Matthew McKinley, Administrator, Radiation Health Program
Daniel Collins, Deputy Director, DNMS, RI	
Leira Cuadrado, Health Physicist, FSME	

DISCUSSION:

During the 2008 Integrated Materials Performance Evaluation Program (IMPEP) review of the Kentucky Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for five performance indicators and satisfactory, but needs improvement, for three performance indicators. Six recommendations were made by the IMPEP review team. On October 28, 2008, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Program. The MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC program. The MRB requested that Kentucky continue to remain in monitoring status, and that calls between the Program and NRC staffs continue to be conducted quarterly, and that a Periodic Meeting take place approximately one year from the 2008 IMPEP review. On September 15, 2009, a periodic meeting was held to discuss the status of the Program and the recommendations made during the 2008 IMPEP. On January 7, 2010, the MRB met to discuss the results of the periodic meeting. The MRB concluded that the next IMPEP review of the Program should take place as currently scheduled in Fiscal year 2012.

The following is a status summary of the six recommendations that were identified in the 2008 Kentucky final IMPEP report:

1. The review team recommended that the Commonwealth revise its inspection procedures to require documentation of the closure of any previous violation, verification of corrective actions and evaluation of preventive measures implemented by the licensee both in the inspection documentation and during the exit meeting with the licensee.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

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

2. The review team recommended that the Commonwealth discuss previous inspection findings, corrective actions, and any potential violations with the licensee during inspections.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures.

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

3. The review team recommended that the Commonwealth use its own calibrated radiological survey equipment to perform independent confirmatory surveys during inspections.

Status: The Program has revised their inspection procedures to address this recommendation and has trained the staff on the revised procedures and the need to use Program equipment when conducting radiation surveys/measurements at licensee facilities

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

4. The review team recommended that the Commonwealth develop and implement a reliable mechanism to identify when a license is in need of a comprehensive renewal, identify these licenses, and develop and implement a plan to perform these renewals.

Status: The Program has put in place a revised data base that tracks licensing actions and identifies when a license is in need of a comprehensive renewal.

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

5. The review team recommended that the Commonwealth integrate the pre-licensing requirements of FSME 07-026 into their licensing program and reevaluate new licenses issued since September 2007 for implementation of these requirements.

Status: The Program has put in place a specific procedure to implement the requirements of FSME 07-026; Program staff has received training on this procedure. These requirements have been implemented for new licenses issued since September 2007.

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

6. The review team recommended that the Commonwealth develop and implement a mechanism to verify the implementation of the approved quality assurance and quality control program of the SSD manufacturer's program.

Status: The Program has taken action on this recommendation. Changes were made to the manufacturing and distribution inspection forms so that during inspections of SS&D manufacturers, the staff verifies the implementation of the manufacturers' approved quality assurance and quality control programs.

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

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

An enthusiastic staff with diverse backgrounds, accompanied by a balanced work load and a good relationship with management is the strength of the Program. Staff is supportive of each other and work together to achieve maximum success for the Program. Program management has a clear vision for the Program and is very supportive of staff training and work supporting national level organizations.

Program Weaknesses

The Program noted one weakness which is that the staff can be pulled in many directions related to non-radioactive materials work. Program management is working to ensure this does not conflict with the Commonwealth's Agreement State responsibilities.

Feedback on the NRC's Program

The Program commented that both the overall relationship and communications with the NRC are good. The Program welcomed the NRC funding of training. The Program suggested that NRC should look at providing more complimentary assistance to Agreement States if it is requested. The Program stated that sometimes unexpected issues arrive where man power and technical expertise are needed to help with a short term issue.

Agreement State Program Staffing and Training

The Program staff consists of eight individuals, one Program supervisor and one Program Administrator. There is one staff vacancy which is the Program supervisor position. Mr. McKinley anticipated having the supervisory position filled in the next few days following this Periodic meeting. Since the previous Periodic meeting there was one retirement which was the Program administrator. That position was filled by Mr. McKinley which created the vacancy at the Program supervisor level.

Support for staff training exists in the Program. Kentucky welcomed the NRC's revised policy on funding training for Agreement States. Program staff has attended multiple NRC training courses. The Program Supervisor noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization

The Program is administered by the Radioactive Materials Section of the Radiation Health Branch (Branch). The Branch is part of the Radiation Health Program. In addition to the Program, the Branch is responsible for radiation producing machines, radiological emergency response and environmental radiation/radon.

Program Budget/Funding

Mr. McKinley stated that the Program is adequately funded for now. Funding sources for the Program include fees, grants and appropriations. The Program is being subject to six furlough days throughout the current fiscal year. Mr. McKinley stated that he anticipates those furlough days going away at the start of the next fiscal year (July).

Inspection Program

The Program's inspection frequencies are at least as frequent as NRC's. Fourteen Priority 1 and Priority 2 inspections were overdue with respect to NRC inspection frequencies. About 89 other inspections were past due. Mr. McKinley stated that the inspection backlog was manageable and not a burden on the Program.

The Program maintains a database to monitor inspection scheduling and tracking and is working on a new data base. Management is aware of the importance of inspection program schedules.

The Program had no licensing actions that were overdue. Mr. McKinley stated that the number of licenses has remained constant over the last several years at about 420 licenses. The Program averages about 40 to 60 open licensing actions on average at any one time.

Regulations and Legislative Changes

There have not been any legislative changes or proposals that have affected the Program. The Program's regulations are not subject to sunset laws.

The following regulations are currently overdue:

- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR Parts 20 and 61 amendment (60 FR 15649 and 60 FR 25983), that was due for Agreement State implementation on March 1, 1998. (RATS ID 1995-3)
- "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. (RATS ID 1995-6)
- "Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 amendment (60 FR 48623), that was due for Agreement State implementation on October 20, 1998. (RATS ID 1995-7)
- "Minor Corrections, Clarifying Changes and a Minor Policy Change," 10 CFR Parts 20, 35, and 36 amendment (63 FR 39777 and 63 FR 45393), that was due for Agreement State implementation on October 26, 2001. (RATS ID 1998-5)
- "Transfer for Disposal and Manifests: Minor Technical Conforming Amendment," 10 CFR Part 20 amendment (63 FR 50127), that was due for Agreement State implementation on November 20, 2001. (RATS ID 1998-6)

- “Respiratory Protection and Controls to Restrict Internal Exposure,” 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524), that was due for Agreement State implementation on February 2, 2003. (RATS ID 1999-3)
- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337), that was due for Agreement State implementation on May 17, 2003. (RATS ID 2000-1)
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendment (65 FR 63749), that was due for Agreement State implementation on January 8, 2004. (RATS ID 2000-2)
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendment (65 FR 79162), that was due for Agreement State implementation on February 16, 2004. (RATS ID 2001-1)
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that was due for Agreement State implementation on April 5, 2005. (RATS ID 2002-1)
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendment (67 FR 20250), that was due for Agreement State implementation on October 24, 2005. (RATS ID 2002-2)
- “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. (RATS ID 2003-1)
- “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)
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 amendment (70 FR 2001), that was due for Agreement State implementation on October 1, 2007. (RATS ID 2005-1)
- “Medical Use of Byproduct Materials - Recognition of Specialty Boards - Part 35,” 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008. (RATS ID 2005-2)
- “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)
- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 amendment (72 FR 45147, 54207), that was due for implementation on October 29, 2010. (RATS ID 2007-1)

- “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 was due for implementation on December 17, 2010. (RATS ID 2007-2)
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendment (72 FR 55864), that was due for implementation on November 30, 2010. (RATS ID 2007-3)

Six of the above overdue regulations have been filed with the legislative research commission with a hearing scheduled for March 2011. Another set of six overdue regulations will be filed with the same commission in March 2011. The Program expects all 12 regulations to be final and submitted to NRC for final review in April 2011. After that the Program intends to work on adopting the other seven overdue regulations and have them adopted by July 2012.

Event Reporting

The Program communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a correct manner. Since the last Periodic Meeting in September 2009, eight events were reported to the NRC. It was noted during this Periodic meeting that a few of the events had not been closed out by the State. The Program agreed to follow-up on this issue and close out events as appropriate.

Response to Incidents and Allegations

The Program continues to be sensitive to notifications of incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Program is aware of the need to maintain an effective response to incidents and allegations.

Sealed Source and Device Program

The State has had no actions with regards to their SS&D program since the last periodic meeting.

Current State Initiatives

The Program’s priority initiative is implementing the currently overdue NRC regulations.

Commonwealth’s Mechanisms to Evaluate Performance

Mr. McKinley stated that he plans on assigning parts of the IMPEP questionnaire to his staff periodically between reviews to assess how the Program is performing.

Action Items Resulting From the Meeting

NRC Region 1:

- Will provide the Program with RIS-05-031 (completed 2/17/11 via email to Mr. McKinley).
- Will send the Program with Region 1 DNMS organization chart (completed 2/17/11 via email to Mr. McKinley).
- Will send NRC comment letter on Kentucky regulations for RATS ID 1997-5 (completed 2/17/11 via email to Mr. McKinley).

NRC/FSME:

- Will keep in touch with Kentucky with regards to integration of ISMP.

CONCLUSIONS:

Kentucky's program continues to improve. The Program is adequately staffed. Kentucky has been responsive to the recommendations that were made during the 2008 IMPEP review. All of the recommendations made during the IMPEP have been addressed and should be evaluated at the next IMPEP review. Although Kentucky cannot predict a date for implementation of the overdue regulations, they are hoping for an April 2011 implementation date.

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

Agenda for Management Review Board Meeting

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, NRC staff members, State representatives, and other participants.
3. Discussion of Periodic Meetings:
 - a. Rhode Island
(October 22, 2010) – ML110630554 –Janda / Orendi
 - b. Kentucky
(February 10, 2011) – ML110620319 – Orendi / Cuadrado / Collins
4. Adjournment

Invitees:	Michael Weber, OEDO	Donna Janda, Region I
	Bradley Jones, OGC	Monica Orendi, Region I
	Charles Miller, FSME	Ray Lorson, Region I
	Cynthia Pederson, Region III	Dan Collins, Region I
	Raymond Rusin, Rhode Island	Duncan White, FSME
	Matthew McKinley, KY	Michelle Beardsley, FSME
	Karen Meyer, FSME	Lisa Dimmick, FSME
	Jennifer Olipa, CO	Kathryn Brock, OEDO
	Rob Lewis, FSME	
	Terry Reis, FSME	