

March 14, 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

David Lew, Deputy Regional Administrator  
Region I

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 22, 2011 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of periodic meetings held with the Utah and Arizona Agreement State Programs has been scheduled for **Friday April 22, 2011 from 1:00 p.m. to 2:30 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](mailto:Michelle.Beardsley@nrc.gov).

Enclosures:  
As stated

cc w/ encl.: Mike Snee, OH  
Organization of Agreement States  
Liaison to the MRB

MRB Members

Distribution: DCD (SP01)

MSSA\_Technical\_Asst

RLewis, FSME

TReis, FSME

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JOlmstead OGC

RErickson, RIV

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## UTAH PERIODIC MEETING SUMMARY

Date of Meeting: November 4, 2010

### Attendees

NRC	LOUISIANA
Rachel Browder, RSAO	Rusty Lundberg, Division Director
Janine Katanic, FSME	Craig Jones, Radioactive Materials & X-Ray
	Loren Morton, Geotechnical Support
	John Hultquist, Low Level Radioactive / Uranium Mills
	Gwyn Galloway, Health Physicist
	Mario Betollo, Health Physicist
	Phillip Griffin, Health Physicist

### DISCUSSION:

The Utah Agreement State Program is administered by the Division of Radiation Control (the Division) located in the Department of Environmental Quality (the Department). The Utah program regulates approximately 200 specific licenses authorizing agreement materials. The Division also regulates three uranium mill sites and a commercial 11e.(2) disposal facility and has regulatory responsibility for a low-level radioactive waste (LLRW) disposal site.

The last full IMPEP Review was conducted during the week of June 11-15, 2007. The team reviewed the five common performance indicators and three of the four non-common performance indicators. The three non-common performance indicators reviewed were (1) Compatibility Requirements; (2) Low-Level Radioactive Waste Disposal Program; and (3) Uranium Recovery Program. The fourth non-common performance indicator is sealed source and device evaluation, which was returned to NRC on June 1, 1996.

The IMPEP review team identified two of the performance indicators to be *satisfactory, but needs improvement*. These two indicators were Technical Quality of Incident and Allegation Activities and Uranium Recovery Program. Utah's performance for the remaining six performance indicators reviewed was found *satisfactory*. The MRB agreed with the review team's recommendation that the Utah Agreement State Program was adequate to protect public health and safety and compatible with NRC's program. Additionally, the MRB requested that a follow-up IMPEP review be conducted in one year to focus on the two performance indicators that were identified as *satisfactory, but needs improvement*.

The follow-up IMPEP Review was conducted the week of July 15-18, 2008. The review team evaluated the common performance indicator, Technical Quality of Incident and Allegation Activities, and the non-common performance indicator, Uranium Recovery Program. The review team recommended, and the MRB agreed, that both indicators be found *satisfactory* and the two recommendations that had been opened during the 2007 IMPEP review were subsequently closed. The Utah Agreement State Program was found adequate to protect public health and safety and compatible with NRC's program. Based on the recommendations by the review team, the MRB determined that the next full IMPEP review take place in approximately 3 years, with a periodic meeting scheduled for January 2010. Due to retirements for personnel from each of our agencies and conflicting schedules, the periodic meeting was delayed until this time. The purpose of this periodic meeting is to fulfill that requirement in order to evaluate the

continued implementation of the Agreement State Program. The review team initiated the meeting with a summary of the IMPEP review process, including the purpose and scope of the review, the list of team members for the next Utah program review, how the process of reviewing the draft IMPEP report proceeds, and the final MRB meeting.

Other topics covered at the meeting included:

Program Strengths: The Division has a stable workforce with approximately 60-80% of the staff having over 20 years experience in the program. The depth and knowledge of the staff is a major strength of the program. The new Division Director expressed that he is impressed with the Division's quality of work products and the staff's commitment and dedication. The Division expressed that the staff's skill-sets support the requirements of the Division.

The Division's development and implementation of inspection modules for the uranium recovery program provides a methodology to ensure that all elements of the uranium program are inspected every year. The Division indicated that they have been successfully implementing the inspection modules and, as a result, there is no backlog in the inspection program.

The Department has several methods to develop employees. These include formalized programs, such as a certified public management program and internal leadership development program, as well as a small group leadership skills program. In addition, the Division is implementing knowledge management transition and succession planning. For example, implementation of regulation reviews have been performed by different members of the staff so each is familiar with the process.

Program Weaknesses: The Division identified the transition of the technical IT support staff from within the Department to the overall state office as being a weakness. The transition of IT support to the state office has reduced responsiveness and comprehensive support by the IT staff for the Division's custom databases. The Division is unsure how their custom databases would support the anticipated web-based licensing that the NRC is developing.

The Division also identified that their staffing may be a potential weakness because some of the staff's eligibility for retirement may occur at the same time.

#### Feedback on NRC's Program

The Division indicated that they appreciated the good support provided by NRC Region IV and the communications between the two agencies.

The Division is unsure how their custom computer databases will be capable of supporting the web-based licensing that the NRC is developing. However, the Division indicated that, if the NRC could provide the required format and specific data-fields necessary to transfer data to a central platform, the Division indicated that they may be able to support the request to transfer their data.

The Division's licensees have indicated that it is cumbersome to get credentialed for NSTS. The Division stated in part that the NRC should not consider tracking lower-tier sources until all of the issues associated with the current system are resolved. The Division also stated that the NSTS quarterly calls are very helpful.

### Staffing and Training

At the time of the periodic meeting, the Division staffing was approximately one staff position for every 50 licenses (1:50). The Division indicated there was no backlog on core inspections and licensing actions were current. The Radioactive Materials Section has one manager and four technical staff. The Low-Level Waste Section and Uranium Recovery have one manager and seven technical staff; however, one staff member supports the radon program. In addition, the Geotechnical Support Section has one manager, four hydrologists, and two environmental engineers. The Division contracts technical support for permitting and licensing actions for the low-level radioactive waste facility. Compliance actions and enforcement cases are not contracted, but are processed by the Division.

During the review period, one position was eliminated and there was a reduction in force that eliminated a second engineering position. In addition, one of the health physics staff in the Radioactive Materials Section is on extended medical leave. The Division has borrowed engineering services from the Solids & Hazardous Waste Section to support the review and issuance of the mixed waste RCRA permits.

The Division is anticipating the hiring of four additional staff, which would reduce the use of consultants for permitting and licensing actions and help to support the Radioactive Materials Section. The approval to start the recruitment process is still pending.

### Program Reorganizations

DEQ named Rusty Lundberg as the new director of the Division, replacing Dane Finerfrock, who retired at the end of June 2010. Mr. Lundberg began his appointment on July 1, 2010. He has been with DEQ for 25 years, where he has been the branch manager overseeing solid waste for the Division of Solid and Hazardous Waste and most recently serving as the manager of the Energy and Sustainability Group, where he represented Utah on The Climate Registry and participation in the Western Climate Initiative. There were no other reorganizations within the Division during the review period and no reorganizations are anticipated in the future. The only anticipated change would be the possible elimination of the consultant contract, if the Division is authorized to hire additional staff.

### Changes in Program Budget/Funding

The Division's funding for the Radioactive Materials section comes from the general fund, fee based category. There is no change anticipated in the funding for the Radioactive Materials section.

The Division's funding for the Low-Level Waste section, Uranium Recovery and

Geotechnical Support Section, comes from the Environmental Quality Restricted Account (EQRA). The EQRA is a statutory account that is funded through disposal fees paid by operators of commercial solid, hazardous, and radioactive waste facilities and municipal solid waste landfills. There have typically been enough funds to account for fluctuations in the waste volumes; however, during FY10, the Department had to take additional actions to shore up the fund, which cannot be sustainable during the next fiscal year. The coming legislature will address the shortfalls in a number of ways, including but not limited to possible removal of the statutory fee rate and mechanics for disposal and utilization of an annual or "flat fee" that would not be reflective in the waste volumes of the operators.

#### Materials Inspection Program

The Division utilizes more restrictive priority inspection criteria than the criteria established in NRC Manual Chapter 2800. At the time of this periodic meeting, the Division reported there were 12.4% in overdue inspections, based on the Program's more restrictive criteria. However, it is anticipated that the Division will meet the NRC inspection criteria during the next IMPEP review.

#### Materials Licensing Program

The Division performed prelicensing visits as appropriate and ensured that increased controls were in place prior to issuing new licenses for Category 2 and above facilities. The Division implemented the increased controls and fingerprinting orders by license conditions.

#### Regulations and Legislative Changes

The State is up to date on regulation amendments currently required for compatibility, except for the following amendment package listed below (RATS ID 2007-03). The state submitted the proposed regulation package to the NRC. The NRC documented their review response by letter dated September 28, 2010, which identified two comments to the proposed rule. During this periodic meeting, the state expressed that it cannot promulgate regulations that it cannot enforce and therefore cannot incorporate one of the comments into their final rule. As a result of the discussion during the periodic meeting, the review team will look into the comments and discuss the matter further with the state.

- "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

#### Event Reporting, Including Follow-up and Closure Information in NMED

During this review period which encompasses July 18, 2008, to the present, the State reported 19 events to the NRC Operations Center, which were also updated to NMED. For this fiscal year, the Division had six events and two have been closed.

Response to Incidents and Allegations

During the IMPEP review in 2007, there was a recommendation associated with conducting on-site reviews of incidents. During the follow-up IMPEP review in 2008, the Division demonstrated that the policy changes for documenting the decision to conduct an on-site investigation as part of their incident response activities was effective and therefore, this recommendation was closed. In addition, the performance indicator was found satisfactory.

During this review period, the Division responded to several incidents and conducted reactive inspections. Two reactive inspections were conducted within one month prior this periodic meeting. The staff members who performed the two reactive inspections provided a detailed account of their actions in response to the incidents which involved radiography cameras. It was also noted that, as a result of the staff's training of a State Trooper, who was the first responder in the first incident, the training was successfully used during the second incident, where the same State Trooper was also the first responder. As a result of the training, during the second incident the State Trooper knew where to find the survey meter in the truck and how to ensure that the radiography source was intact and secure inside the radiography camera which had been thrown 2-3 feet from the truck. Based on the training he had received, he knew that the area was safe and that the highway did not have to be closed, and he knew who to immediately contact. The Division was continuing to process these two incidents; however, it was evident that they were following their processes for documenting decisions and performing reactive inspections.

The Division indicated that they document and follow up on allegations which are submitted in writing to the Division. This process is in accordance with the Division's policy. The Division indicated that this policy was developed as a result of receiving numerous telephone calls of alleged violations in which the caller would choose not to document the concern and submit it to the Division. During a discussion of this policy, the Division noted, however, that on several occasions they responded when it appeared there may be a health or safety concern related to the called-in allegation.

Emerging Technologies

The Division did not discuss any emerging technologies during the periodic meeting.

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

The Division provided an example of a complicated enforcement case. A licensee was no longer using large quantities of radioactive materials; however, the licensee had not initiated decommissioning within the required 2-year limit. The licensee had not used the large quantity sealed sources for approximately 15 years. The Division had issued a DEQ Order to the licensee, requiring the licensee to dispose of the sources. However, the licensee was not complying with the DEQ Order. An Administrative Judge issued an order the day before this periodic meeting, requiring the Licensee to comply with the initial DEQ Order within 120 days. The Division noted that some of the sources were Pu-238, Am-241, and barium. The latter would require disposal at the Hanford facility.

Current State Initiatives

The Division used lean six sigma as a method to identify the depth of knowledge within the discipline areas of each Section. This methodology visually displayed the discipline areas that were covered by the staff and also displayed the discipline areas that were lacking by the staff. The Division indicated that this tool is one method to identify areas of training to ensure development of employees and knowledge transfer management and promote efficiency in the Sections. The tool appeared to be an efficient method for management to identify potential areas for training and development.

Current NRC Initiatives

Dr. Janine Katanic discussed ongoing *Office of Federal and State Materials and Environmental Management Programs* (FSME) initiatives with the State of Utah representatives. This included a brief review of the latest FSME letters and RCPD letters that requested a review and response from the Agreement States. In addition, Dr. Katanic discussed the national source tracking system, web-based licensing, and security rulemaking.

## CONCLUSIONS:

The Utah Agreement State Program remains a strong, stable program with good management support. The technical staffing level for the Program is adequate, but vulnerable with any potential reductions in force or retirements. The Division is aware of this issue and is implementing succession planning and providing justification for four additional staff members.

Schedule for the Next IMPEP Review

NRC staff recommends that the next IMPEP review be held, as currently scheduled, in FY 2012.



AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE  
ARIZONA RADIATION REGULATORY AGENCY

DATE OF MEETING: FEBRUARY 1, 2011

<b>NRC Attendees</b>	<b>California Attendees</b>
Randy Erickson, RSAO	Aubrey Godwin, Director
Roy Caniano, Director, DNMS	Brian Goretzki, Health Physicist
	Dan Kuhl, Health Physicist
	Jerry Perkins, Health Physicist
	Wayne Yates, Health Physicist

**DISCUSSION:**

The Arizona Agreement State Program (Program) is administered by the Arizona Radiation Regulatory Agency (Agency). The Agency Director reports directly to the Governor.

The previous IMPEP follow up review was conducted the week of March 29 – April 1, 2010. At the conclusion of the review the team found that Arizona's performance was found satisfactory for the indicator, Technical Quality of Inspections, and satisfactory, but needs improvement, for the indicators Technical Staffing and Training, Status of Materials Inspection Program, and Technical Quality of Licensing Actions. The review team closed eight of 10 recommendations, and opened two new recommendations. Accordingly, the review team recommended, and the MRB agreed, that the Arizona Agreement State Program is adequate to protect public health and safety, but needs improvement, and compatible with NRC's program. The MRB also concluded that the period of Heightened Oversight should continue and that the Agency's Program Improvement Plan be amended to address the recommendations of the follow up IMPEP review. Additionally, the MRB agreed with the team's recommendation that the next full IMPEP review should take place in two years and that a Periodic Meeting be held within one year.

The proposed status of the recommendations from the 2010 Arizona final IMPEP report is summarized below.

- The review team recommends that the State review and update, if appropriate, the Agency's staffing and budget plan to ensure Program needs are met and to maintain long-term stability of the Program. (Section 2.1)

Status: At the present time the FY11 budget has been funded. The Program submitted their budget request for FY12 with no increases and when the Governor's proposed budget came out, it did not cut the Program's funding. The Governor's proposed budget is under legislative review.

The Program currently has three vacancies. The Program solicited internally for one of those positions and one staff member will transfer over to the materials program in the

near future. The Program Manager also retired following the follow up IMPEP review, and the Program is now in the process of soliciting for that position. The Program Director does not believe management will allow him to fill the third position at the present time. He believes that when the two vacancies are filled, and with occasional assistance from other areas of the Program, they will have sufficient staffing to keep up with the current workload. This recommendation remains open.

- The review team recommends that an Agency manager accompany each inspector, at least annually, to ensure quality and consistency in the inspection program. (Section 2.3)

Status: The Program has accompanied all four of the inspection staff; however, at the time of the meeting, they had not yet fully completed the documentation. The Program also reported they are committed to a more aggressive schedule for supervisor accompaniments. They plan to accompany inspectors once every six months instead of an annual accompaniment. This recommendation remains open.

- The review team recommends that the State implement the pre-licensing checklist and guidance for all licensing actions to provide assurance that radioactive material will be used as specified on the license. (Section 2.4)

Status: The Program reported they had been following the pre-licensing guidance provided by NRC, but that initially they had misunderstood the meaning of “person”. During the follow-up review, the review team noted that the Program used the pre-licensing checklist on all new licensing actions. However, they failed to use it for certain specific change-of-ownership actions as well as certain new applicants they believed to be known entities because they were named as authorized users or radiation safety officers on other licenses. Program staff did not recognize that the owner is the actual licensee, and if they did not have a relationship with that specific individual, the pre-licensing guidance had to be used. The Program has subsequently modified their pre-licensing checklist to reflect this understanding, and have trained the licensing staff. This recommendation should be verified and closed at the next IMPEP review.

- The review team recommends that the State review its radioactive materials licenses regarding the requirements for financial assurance, and either obtain financial assurance for licenses that are authorized to possess the applicable quantities, or revise the license conditions to ensure clear quantity limits that will not require provision of financial assurance. (Section 2.4)

Status: The Program reported that they have completed a review of all licenses to determine if financial assurance applies to them. This recommendation should be verified and closed at the next IMPEP review.

Other topics covered at the meeting included.

Program Strengths: The Program has struggled with budget shortfalls that have left the Program short staffed, short of funding, and struggling to maintain the workload; however, the staff has pulled together to ensure that the licensing and inspection programs do not fall behind, and that incidents and allegations are investigated.

They have successfully integrated the added workload associated with Increased Controls, as well as fingerprinting and NSTS requirements. Staff members are dedicated and work well together providing a high level of customer service to their licensees.

Program Weaknesses: The Program's biggest challenge has been budgeting and hiring staff. Currently a hiring freeze is in place. They are also having difficulty having pay increases approved. They are currently under furlough six days per year and experienced a 2.5 percent pay cut when performance pay was eliminated.

Feedback on NRC's Program:

The Program indicated they are appreciative for NRC training funds. That program works well for Arizona and they have been able to get staff needed training. They believe they would benefit greatly if NRC would begin paying for the Five Week Health Physics course because they are unable to hire trained staff with the salaries presently offered. They are forced to train their own staff.

Staffing and training:

The Arizona Program will have three fulltime inspectors when the individual transferring in from another part of the Program begins work. That still leaves two vacancies. As indicated above, they are in the process of hiring for the Program Manager position, and they don't believe they will be allowed to fill the last remaining position at the present time. One individual retired recently, but they have not had a lot of staff turnover.

The status of Agreement State staff members who fail NRC core training courses was discussed. The Program did not have any staff fail a required training course this review period. NRC staff discussed the expectations for alternative training or retraining of their staff should class failure occur in the future.

Program reorganizations:

None Noted.

Changes in Program budget/funding:

As discussed above, funding for the Arizona Program has been a recurring problem in recent times. They are currently fully funded for FY11 and have submitted their FY12

budget without an increase in funding. The Governor's proposed budget does not cut the Program's funding; however, the budget is still under review by the legislature and changes could still be made to it.

Materials Inspection Program:

The Program reported that they currently have no overdue inspections. Routine inspections are generally performed by the due date, but occasionally inspections are performed within the allowed +25 percent window. Initial inspections are typically performed within 12 months of issuance. They continue to inspect reciprocity licensees and have not had difficulty performing inspections on at least 20 percent of candidate reciprocity licensees.

The Program indicated that all IC licensees have implemented the fingerprinting requirements. IC inspections are performed in conjunction with routine health and safety inspections. Fingerprinting and NSTS requirements are also reviewed at the time of inspection.

The Program reported they are not behind on licensing. They noted that if they do not meet State mandated licensing timeliness goals, they have to refund money to the legislature.

Regulations and Legislative changes:

The Program reported they are not seriously behind on regulations. The most overdue regulation was due in 2009. The Program reported that this regulation is in a regulation package that is being prepared for submission to NRC in the near future.

There have been no new legislative actions that have directly impacted the Program.

Event reporting, including follow-up and closure information in NMED.

Between the date of the 2010 IMPEP review and the 2011 Periodic Meeting, the Program had reported 3 events to NMED. Those three events remain open.

Response to incidents and allegations.

The Branch continues to be sensitive to notifications of incidents and allegations. Incidents are reviewed for their affect on public health and safety. Incidents are evaluated for safety significance and staff is dispatched to perform onsite investigations whenever possible.

Status of allegations and concerns referred by the NRC for action.

None Noted.

Significant events and generic implications.

The Program identified a brachytherapy incident at a local hospital involving a medical device used in conjunction with an HDR unit, and the resultant Abnormal Occurrence as a significant event they are currently working on.

Current State Initiatives.

The Program noted that furloughs continue. No specific end date has been identified.

Emerging Technologies.

Nothing specific noted.

Large, complicated, or unusual authorizations for use of radioactive materials.

Nothing specific noted.

State's mechanisms to evaluate performance.

Program managers review performance reports involving licensing actions, inspections performed, incidents reported, and reports reviewed. Inspector accompaniments are also performed to ensure they are performing at the expected level.

Current NRC initiatives:

NRC staff discussed ongoing NRC initiatives with the Branch. These included in part, NRC's safety culture policy statement, web based licensing, NSTS, the NUREG 1556 revision process, the revisions to IMC 2800, the proposed Part 37 and accompanying guidance document, and potential changes to Part 20.

Summary:

The Program continues to struggle with staffing and budgeting, but they are keeping up with their work. They have not yet submitted a Program Improvement Plan (PIP) that is acceptable to NRC, but they continue to work on revising the document. It is recommended that the MRB continue the period of Heightened Oversight.

Schedule for the next IMPEP review:

It is recommended that the next IMPEP review to be held on schedule in April 2012.

**Agenda for Management Review Board Meeting  
April 22, 2011 1:00 p.m. – 2:30 p.m. EDT, T-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, NRC staff members, State representatives, and other participants.
3. Discussion of Periodic Meetings:
  - a. Utah  
(November 4, 2010) – ML103360492--Browder / Katanic
  - b. Arizona  
(February 1, 2011) – ML110591128 –Erickson / Caniano
4. Adjournment

Invitees: Michael Weber, OEDO  
Bradley Jones, OGC  
Charles Miller, FSME  
David Lew, Region I  
Aubrey Godwin, AZ  
Rusty Lundberg, UT  
Michael Snee, OH  
Kathryn Brock, OEDO  
Rob Lewis, FSME  
Terry Reis, FSME

Randy Erickson, Region IV  
Janine Katanic, FSME  
Roy Caniano, Region IV  
Duncan White, FSME  
Michelle Beardsley, FSME  
Karen Meyer, FSME  
Lisa Dimmick, FSME  
Rachel Browder, Region IV