

April 15, 2011

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

FROM: Scott W. Moore, Acting Director */RA/*
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 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). To establish the self-assessment process, staff has drafted FSME State Agreements (SA) Procedure SA-123, "Conducting Self-Assessment of the Integrated Materials Performance Evaluation Program." The document was distributed for comment both internally within U.S. Nuclear Regulatory Commission (NRC) and externally to stakeholders on January 21, 2011 (ML103630011). The current estimated date of completion of the final procedure is June 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 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," were the most appropriate places to include the identified information. Staff has completed and finalized revisions to these procedures. These procedures were submitted to the Office of the Inspector General (OIG) on March 4 and March 9, 2011, respectively. With the completion of OIG's review of these procedures, we consider this recommendation to be closed.

Recommendation 3

Per OIG memorandum dated January 7, 2011, this recommendation is 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 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 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 5 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

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(RCPD-10-006, ML100750102). As of November 2010, 22 of the 37 Agreement States responded to the questionnaire. Staff evaluated 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 (ML110880109, enclosed). Staff analyzed the data and concluded that a voluntary, password protected database on the FSME public website should be created to include Agreement State enforcement actions involving bans, revocations, suspensions and denials. Staff is currently proceeding to build the database. Staff plans to issue an Agreement State letter by June 15, 2011, to solicit for information for the database.

Recommendation 5

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

Enclosure:
Summary Analysis

cc: Michael F. Weber, DEDMRT

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