UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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July 6, 2011

Michael Ortiz, Bureau Chief
Radiation Control Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

SUBJECT: SUMMARY OF PERIODIC MEETING WITH NEW MEXICO ENVIRONMENT DEPARTMENT HELD ON JUNE 7, 2011

Dear Mr. Ortiz:

A periodic meeting was held on June 7, 2011, with you, Mr. Santiago Rodriguez, Program Manager, and Mr. Butch Tongate, Director Environmental Protection Division. The purpose of this meeting was to review and discuss the status of the New Mexico Agreement State Program. The NRC was represented by Janine Katanic, FSME, and me from Region IV. I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or if you have any additional remarks about the meeting in general, please contact me at 817-860-8116 or by e-mail at Rachel.Browder@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Rachel S. Browder, CHP
Regional State Agreements Officer

Enclosure:
New Mexico Periodic Meeting Summary

Internal distribution via e-mail:
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7/6/11			

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NEW MEXICO PERIODIC MEETING SUMMARY
Date of Meeting: June 7, 2011

Attendees

NRC	NEW MEXICO
Rachel Browder, RSAO	Butch Tongate, Director, Environmental Protection Division
Janine Katanic, FSME	Michael Ortiz, Chief, Radiation Control Bureau
	Santiago Rodriguez, Program Manager

DISCUSSION:

The New Mexico Agreement State program is administered by the Radiation Control Bureau, under the Environmental Protection Division within the New Mexico Environment Department (NMED). The Bureau was recently moved to the Environmental Protection Division. Mr. Tongate was appointed by the recently-elected Governor as the Director of the Division. NMED was recently reorganized into four divisions, the Environmental Protection Division, Resource Protection Division, Operations & Infrastructure Division, and Information Technology Division. During the reorganization, the radioactive materials program continued to be executed by the Radiation Control Bureau. During the past 2 years, the NRC sent two letters of support for the program to two different Secretaries of the Environment Department. During these communications and as part of this periodic meeting, we understand that the State of New Mexico is taking steps to ensure the Radiation Control Bureau has sufficient resources and oversight to protect public health and safety. More specific information on staffing and training is discussed below.

At the time of the periodic meeting, the Bureau regulated approximately 200 licenses authorizing the use of byproduct, source, and special nuclear material. The Bureau does not regulate 11.e.2 material and does not license a low level waste facility.

The last IMPEP Review was conducted July 20-24, 2009. The review team recommended, and the Management Review Board (MRB) agreed, that the New Mexico Agreement State Program was found *satisfactory* for five of the six performance indicators reviewed and *satisfactory, but needs improvement* for the performance indicator Technical Quality of Incident and Allegation Activities. There was one recommendation regarding updating information to NMED. Overall, the New Mexico Agreement State Program was found adequate to protect public health and safety and compatible with NRC's program.

Based on the results of the 2009 IMPEP Review, the MRB concurred that the next full review of the New Mexico Agreement State Program is to take place in approximately 4 years from this review, and a periodic meeting would be tentatively scheduled for July 2011. The purpose of this periodic meeting is to fulfill that requirement in order to evaluate the effectiveness of the State's response to the review team's recommendations, as well as the overall implementation of the Agreement State Program.

Enclosure

The status of the recommendations from the 2009 Final New Mexico IMPEP Report is summarized below:

- The review team recommends that the State develop and implement a process to ensure appropriate notification to the NRC Headquarters Operations Center for reportable events, to ensure all required information is submitted to NMED, and to promote timely closure of NMED entries.

  Status: The Bureau stated that they utilize a database to track all NRC reportable and non-reportable events. A staff member has been designated as the primary point of contact (POC) for the database. In reviewing NMED as part of this periodic meeting, it appears that the State is updating the information appropriately in NMED. This recommendation should be verified and closed at the next IMPEP review.

Other topics covered during the periodic meeting included:

Program Strengths: Although not all of the Environmental Scientist positions are filled, the Bureau has five seasoned inspectors with over 80 years combined experience in a wide array of radiological areas that benefit the program. The inspectors have received the core training courses that reflect MC 1246 training requirements. As a result of the experienced staff, planning efficiencies, and schedules, there is not a backlog of inspection or licensing actions.

The Bureau was moved under the Environmental Protection Division as a result of reorganization within the New Mexico Environment Department (NMED). The Bureau indicated it was a beneficial move and that the responsibilities of the Bureau are congruent with the Division's. In addition, the budget appropriations coding under the Division allows the Director to move funds between the major budget segments as needed, which is beneficial for the overall Division.

Program Weaknesses: The loss of personnel over the last review period is considered a program weakness. The salary within the State is considered good for the area; however, the budget restraint within the State limited the Bureau in quickly filling two supervisor vacancies and several Environmental Scientist positions during the review period. At the time of this periodic meeting, the Bureau Chief and the Program Manager positions had been filled. However, there remain five Environmental Scientist position vacancies. Additional information is provided in the Staffing and Training section.

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 State requested to participate in the current FSME initiative to share a web-based licensing (WBL) software version with the Agreement States. The state is working with their internal information technology department to install the WBL software version on their own server. The

State indicated that they appreciate NRC's efforts on the WBL and believe that the software will help to streamline the process for sharing pertinent license information.

Staffing and Training

The Bureau has 15 positions of which 10 positions are responsible for the Agreement State program activities. The 10 positions represent the Bureau Chief, Program Manager, and eight Environmental Scientist positions. Of the 8 Environmental Scientist positions, there are 3 filled positions and 5 vacancies. It's noteworthy to recognize that of the eight Environmental Scientist positions, 6 are classified as "advanced" and 2 are classified as "operational." This classification allows the State to bring in a highly-qualified candidate initially, in lieu of training someone at an entry level position.

Since May 2010, the NRC has sent two letters of support to the Secretary of New Mexico Environment Department (NMED). The letters did not question the State's ability to protect public health and safety, but encouraged the State to take steps as necessary to fill the vacancies in a timely manner. The State initiated steps to ensure the Bureau had sufficient resources and oversight to protect public health and safety. This included filling the Bureau Chief and Program Manager positions within this review period. In addition, the State was anticipating making an offer during June and two offers were awaiting the Governor's approval. In addition, the Bureau is expecting to post the other vacancies in the near future.

The Bureau is anticipating rehiring a staff member as a *rehired annuitant* to focus on licensing actions. This would alleviate the Bureau Chief from performing licensing actions and allow him to focus primarily on managing the program and performing inspections, as necessary.

Program Reorganizations

NMED reorganized its structure into three divisions. As a result of the reorganization, the Environmental Health Division was dissolved and the Bureau was placed under the newly organized Environmental Protection Division. As stated previously, the Bureau indicated it was a beneficial move and the responsibilities of the Bureau mirror the functions of this particular Division's purpose. The Division's bureaus and programs include the Air Quality Bureau, Occupational Health & Safety Program, Solid Waste Bureau, and Radiation Control Bureau.

Changes in Program Budget/Funding

The Bureau receives general funds from the State. There have been changes in the general fund which have contributed to distribution reductions. For example, in 2008 the general fund was approximately 40 percent of the Bureau's budget, 2010 was approximately 12 percent of the Bureau's budget and the projection for 2012 is approximately 9.5 percent of the Bureau's budget. The program is moving towards

being fully fee funded. It is also important to note that, within the Environmental Protection Division, the Director is able to move funds around within the Division as appropriate.

Materials Inspection Program

At the time of this periodic meeting, the Bureau reported that they were meeting their Quarterly Performance Measures, which were more conservative than the inspection criteria established in NRC Manual Chapter 2800. Therefore, there were no overdue inspections for health and safety or for security inspections, which are tracked separately.

Materials Licensing Program

At the time of this periodic meeting, the Bureau indicated there was no backlog in licensing actions. The Bureau stated that renewals were typically completed within 3 weeks, new applications were completed within 45 days, and amendments were completed in less than 1 week.

Regulations and Legislative Changes

The State is up to date on all regulation amendments currently required for compatibility. The Bureau indicated that they have addressed the final comments for one regulatory package (RATS ID 2008-1), with an effective date of June 30, 2011. The Bureau will provide the final regulations to the NRC for review. A second package (RATS-ID 1993-2) was previously not addressed because the State did not license a Part 36 irradiator. However, now that the State regulates a Part 36 irradiator, the pertinent final regulations will be submitted to the NRC for review.

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

The Bureau reported two events to the Nuclear Material Events Database (NMED) since the 2009 IMPEP review. Both events were medical events and they were appropriately reported to the NRC and properly entered into, and updated within, NMED. One of the events is closed and the second event, which also meets the AO criteria, remains open pending further legal action.

Response to Incidents and Allegations

The Bureau tracks all incidents and events in the Bureau's new event tracking database. The Bureau indicated that they respond to all events, including non-reportable events. The purpose of their response is to assess and document the event as a reference point of information for any potential trends or occurrences in the future. Incidents are quickly reviewed for their affect on public health and safety. The State has one medical event that meets the AO criteria that remains open. The enforcement action taken in this case includes a proposed civil penalty. The case is with the Office of General Counsel.

Status of Allegations and Concerns Referred by the NRC for Action

NRC did not refer any allegations to New Mexico during the review period.

Emerging Technologies

The Bureau did not identify any emerging technologies.

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

The state has two large decommissioning sites. These two sites are Eberline, which has Pu and Am-241 soil contamination, and IBA Molecular, who is decommissioning a cyclotron with activated concrete. The State did not authorize restricted release for IBA Molecular, and the company is subsequently removing the concrete.

Current State Initiatives

The Bureau has been closely involved with the response to the Las Conchas fire, which started after this periodic meeting. Their involvement includes installing and monitoring air samples. The Bureau is also coordinating with other agencies and federal partners, such as the EPA and FBI, in preparing and responding to any potential event involving radioactive material during the Albuquerque International Balloon Festival in October 2011.

State's Mechanisms to Evaluate Performance

The Bureau performs quarterly self-audits on approximately 10 percent of the inspections performed. This includes ensuring the inspection files are complete, the deficiencies are documented appropriately, and a formal corrective action response letter from the licensee is in the file, as appropriate. Historically, the Bureau Chief has performed the inspection accompaniments for all of the inspection staff. Since the Program Manager position has been filled, the Program Manager will perform the inspection accompaniments for all inspection staff. These accompaniments are documented and maintained in the files.

Current NRC Initiatives

NRC staff discussed ongoing Office of Federal and State Materials and Environmental Management Programs (FSME) initiatives with the New Mexico representatives. This included recently issued FSME and RCPD letters, proposed regulatory rulemaking, and new training procedures and applicable forms for the State to follow when requesting NRC training courses. In addition, FSME discussed WBL, in which New Mexico is a participant.

CONCLUSION:

Based on the discussions during the periodic meeting and throughout this review period, it appears that the Bureau is continuing to implement a program that protects the health and safety of the public and the environment. The NRC is supportive of the continuing efforts by the Bureau and NMED to fill the vacancies within the Bureau, which would allow the Bureau Chief and Program Manager to focus on managing the program.

Schedule for the Next IMPEP Review

NRC staff recommends that the next IMPEP review be held, as currently scheduled, in FY 2013.