



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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August 19, 2011

Ms. Karen Beckley, Program Manager
Radiation Control Program
Bureau of Health Care Quality and Compliance
Nevada State Health Division
4150 Technology Way, Suite 300
Carson City, Nevada

Dear Ms. Beckley:

A periodic meeting with you and your staff was held on June 29, 2011. The purpose of this meeting was to review and discuss the status of the Nevada Agreement State Program. The NRC was represented by Dr. Janine Katanic from the Office of Federal and State Materials and Environmental Management Programs (FSME), and me.

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 have any additional remarks about the meeting in general, please contact me at (817) 860-8143 or e-mail Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA M.R. Beardsley for/

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for Nevada

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR THE
NEVADA DEPARTMENT OF HEALTH

DATE OF MEETING: JUNE 29, 2011

NRC Attendees	Nevada Attendees
Randy Erickson, RSAO	Karen Beckley, Program Manager
Janine Katanic, FSME	Adrian Howe, Radiation Physicist/Supervisor
	Eric Matus, Radiation Physicist/Supervisor
	Multiple Technical and Administrative Staff

DISCUSSION:

The Nevada Agreement State program is administered by the Radiation Control Program (Program) in the Bureau of Health Care Quality and Compliance. The Bureau is part of the Nevada State Health Division. At the time of the meeting, the Nevada Agreement State program regulated approximately 240 specific licenses authorizing the use of byproduct, source, and special nuclear material.

The previous IMPEP review was conducted the week of June 1-5, 2009. At the conclusion of the review, review team found Nevada's performance to be satisfactory for five performance indicators and satisfactory, but needs improvement for one performance indicator, Compatibility Requirements. The review team made two recommendations regarding program performance by the State, kept open two recommendations from the previous IMPEP review, and identified one good practice. The team recommended and the MRB agreed that the Program be found adequate to protect public health and safety and compatible with NRC's program, and that the next full IMPEP review be conducted in 4 years.

The proposed status of the recommendations from the 2009 Nevada final IMPEP report is summarized below.

- The review team recommends that the Program revise their inspection procedures and provide training to implement a policy for timely and orderly license termination of licensed materials not in use. (Section 3.3 of the 2005 IMPEP Report)

Status during the 2009 IMPEP review: The Program handles issues associated with licensees who possess licensed material not in use, on a case-by-case basis. The Program is in the process of developing written procedures to address this issue. Inspectors are trained on proper notification procedures when this issue is identified on an inspection. The Program has the support of the Attorney General's office in requiring payment of fees, confiscation of materials, and the revocation of licenses.

Current Status: The Program noted that this issue was also identified by a Nevada legislative audit as an item needing correction. In response to both the NRC and the legislative audit, the Program developed and implemented a procedure to ensure that those licenses that need to be terminated are terminated in a timely manner. The staff has been trained and understands the procedure. The Program has also strengthened

Enclosure

their enforcement procedure regarding license termination and fee collection. Invoices for license renewal fees are sent 60 days in advance of the license expiration date, and invoices for fees are sent 30 days in advance of the payment due date. If the fees are not paid by the due date, they automatically double. If a licensee does not submit their renewal application the due date, the Program automatically doubles their fee and is considered not in timely renewal.

- The review team recommends that the Program develop, implement, and maintain a reliable and comprehensive licensing and inspection database that serves as an effective and efficient planning, tracking, and management tool. (Section 3.4 of the 2005 IMPEP Report)

Status during the 2009 IMPEP review: Following the previous review, the Program revised its existing database to better manage information on radioactive materials licensing and inspection. The Program is still working to implement a database that will serve as an efficient planning, tracking, and management tool. This year, the Program requested legislative approval to use program funding to acquire a new database that will address the limitations of the current database

Current Status: The Program noted that development of a reliable database is still a work in progress, but it is moving forward. The Program secured a copy of the Oregon database, made changes specific to their Program, and submitted it to their IT Department for approval. They are still awaiting that approval. In the interim, the Program modified their current database, implemented new quality assurance procedures for it, and continue to use it. They have found that while not perfect; their current database is now more accurate. When the new database is approved, they plan to implement it.

- The review team recommends that the State submit proposed and final regulations to NRC for compatibility reviews. (Section 4.1.2)

Current Status: The state has been submitting proposed regulations to NRC in a timely manner as regulations are developed. At the time of the meeting, there were only two regulations that had not been submitted to NRC as proposed: RATS 2009-1, due for state adoption 9/28/12 and RATS 2011-1, due for state adoption 12/17/15. The State's regulatory process is that they adopt final regulations but these final regulations might not be codified for several months or years. However, these regulations, once adopted, are enforceable and can be inspected against. There was a miscommunication that the State not submit final adopted regulations to NRC until they had been codified. However, NRC can accept these regulations as final because they have been adopted and are enforceable. The State noted that sometimes when the regulations are codified there are administrative changes or minor changes but occasionally substantive changes that are made by the Legislative Council. During the meeting, it was requested that the adopted regulations be submitted to NRC as final and that if any changes are made when the regulations are codified, they can inform NRC of any changes as appropriate.

- The review team recommends that the State develop all required regulations within the required timeframe. (Section 4.1.2)

Current Status: Since the IMPEP the State has greatly enhanced their regulatory development process. The State has developed all regulations within the required time frame. While they experience delays with codification of regulations following adoption, they have been able to make the process work for them and have greatly improved their timely submission of regulations.

Other topics covered at the meeting included:

Program Strengths: The Nevada Program is a busy program with a highly motivated and dedicated staff who works well together. Program management has placed a high level of trust in the staff and actively encourages staff to speak out for the betterment of the program. Since the last IMPEP review, the Program experienced minimal staff loss but has been successful in filling those positions with talented individuals, bolstering the Program's growing knowledge base.

The Program has placed a lot of emphasis on coordinating and building relationships with other agencies for the common good of their programs. The Program is integrated with local and federal law enforcement agencies regarding response to radiological incidents, is working with the US Department of Transportation in an effort to conduct joint inspections, and is coordinating with other state radiation control programs to ensure that reciprocity candidates who have enforcement actions taken against them in other states do not work in Nevada.

Program Weaknesses: The Program noted they are still able to travel to out-of-state training and meetings; however, they are limited to a 40 hour work week with no overtime or compensatory time for traveling. This has caused them difficulty in attending courses that start on Monday morning or end late on Friday. Additionally, they also noted that the competition for seats in NRC's training courses has often limited their opportunities to attend needed training.

Feedback on NRC's Program

The Program noted their appreciation for NRCs responsiveness to Nevada's needs. As indicated above, they also noted the problems associated with getting into NRC training classes. The Program also stressed their dissatisfaction with the way information dissemination was handled during the Fukushima event. The Program also brought up several technical questions involving issues that are being addressed outside of the Periodic Meeting. These issues included, but are not limited to: the NNSA Off Site Recovery Program, transportation of materials through the State, the NNSA irradiator hardening program, and low level waste issues.

Staffing and Training

The Program is managed by the Program Manager and two Supervisors, one responsible primarily for materials related activities, and one responsible primarily for

emergency response and intergovernmental activities. As noted during the 2009 review, the Program also has another Supervisor based in the Las Vegas who manages machine-based radiation activities for both the Carson City office as well as a Las Vegas field office.

At the time of the meeting, the Materials Section employed 7.7 FTE technical staff members and four administrative staff members. The technical staff members perform licensing, inspection, and emergency response activities. The administrative staff supports the technical staff, handles billing, and tracks all administrative follow-up for the Program.

The Program reported they have lost three technical staff since the 2009 review. All those individuals have been replaced and either have been or are being trained at the present time. The Program indicated that they have cross-trained other staff to assist in the materials program, and with that cross training initiative, currently have enough staff to meet their Program's mission.

Program Reorganizations

The Office has not experienced any program reorganizations since the previous IMPEP review; however, on July 25, 2011, the Program is relocating to an office space that is closer to the main part of Carson City and is closer to other government offices.

Changes in Program Budget/Funding

While the Program did not report any specific difficulties with funding that had an immediate negative impact on the Program, they did note several items that may affect funding in the near future. The Program currently has a dedicated fee fund; however, they have not had a fee increase since 2007 while costs have continued to rise. The legislature recently removed \$1.5M from their dedicated fund leaving the Program with only 6 months of salary reserves. They also removed \$11.5M from the Beatty Waste Site fund, leaving only \$300K in reserves to manage the waste site. Additionally, the Health Department recently returned a program involving oversight of the Nevada Test Site back to the Department of Energy. This oversight program came with \$229K in funding which is now lost.

The staff has also suffered financial losses due to reductions in pay and a shift in costs from the State to the individual. The State instituted a 2.5 percent salary decrease and also requires the staff to contribute an additional 2.6 percent towards their retirement plan. Employees are subject to 6 furlough days each calendar year. The State no longer funds a cost of living adjustment, merit raises have been suspended, longevity pay has been suspended, and no overtime is authorized. Additionally for all new hires, health care coverage in retirement will no longer be a part of the benefit package.

Materials Inspection and Licensing Programs

During the 2009 IMPEP review, the Program was found to have performed 9 percent of all Priority 1, 2, and 3 and initial inspections overdue. The Program reported that they have

caught up on all inspections and are performing inspections approximately 3 months ahead of the scheduled due date. The same holds true for all initial inspections.

NSTS inventories are being reviewed for those affected licensees, and pre-licensing criteria is applied to all applicants and licensees requesting certain changes. Site visits are being performed and all new licenses are hand delivered and a copy of the individual's identification is obtained.

The Program reported that they are working to perform inspections on 20 percent or more of all candidate reciprocity licensees. Additionally, the Program has developed a program to call other Agreement States or NRC to inquire about any recent enforcement actions taken against any licensee requesting reciprocal recognition in the State of Nevada. For example, if a licensee has not paid their fees in another State, Nevada will not grant reciprocity until the fees have been paid to their home state. Also, if a licensee is restricted in some manner in their home state, Nevada will enforce that restriction within Nevada.

The Program reported that the licensing backlog has been nearly eliminated. In January 2010, the Program had approximately 120 pending licensing actions. By January 2011, that number had been reduced to 12 pending licensing actions. The Program continues to issue amendments in a timely manner. Deficiency letters are mailed to licensees within 30 days of receipt of their renewal. The Program reported they are also working to register all GL devices in the State. Currently they have identified 62 generally licensed devices possessed by 18 companies within Nevada.

During the 2009 IMPEP review the team noted that the pre-licensing checklist was not utilized on all amendments. The Program reported that they have corrected this and now use the pre-licensing checklist for all amendments.

Regulations and Legislative Changes

Since the IMPEP, there have been minor changes to Nevada's enabling legislation. The NRC performed a preliminary assessment of the changes but the changes have not been submitted by the state to NRC for formal review. As noted previously, the misunderstanding between the Program and NRC regarding the difference between adoption and codification of regulations has been clarified, and the Program is now sending in regulation packages for review in a timely manner.

On July 27, 2011, the Program submitted several regulations to NRC for review. The package included proposed regulations, final regulations that had not yet been reviewed by NRC and proposed revisions to final regulations to address previous NRC comments.

The Program also requested a correction to the State Regulation Status Sheet. This request addressed the following:

- "Low-Level Waste Shipment Manifest Information and Reporting," 10 CFR 20.2006 (60 FR 15649 & 60 FR 25983) that became effective on March 1, 1995.

This is a proposed revision to a final regulation to address outstanding comments.

- "Respiratory Protection and Controls to Restrict Internal Exposure," 10 CFR Part 20 amendment (64 FR 54543 and 64 FR 55524) that became effective February 2, 2003.

This is a request for a correction to the NRC's State Regulations Status (SRS) sheet which indicated that there were comments on this amendment by NRC. The final regulation was adopted by the Program and awaiting codification.

- "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material," 10 CFR Parts 30, 31, and 32 amendment (65 FR 79162) that became effective on February 16, 2004.

This is a final regulation, adopted by the Program and awaiting codification. With the change of the compatibility category from Compatibility Category B to Compatibility Category C, the previously identified comment that was more restrictive will be acceptable as a Compatibility Category C provision.

- "Medical Use of Byproduct Material," 10 CFR Part 20, 32, and 35 amendments (67 FR 20249), that was due for Agreement State implementation on October 24, 2005.

This is a proposed revision to a final regulation to address an outstanding comment.

- "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.

This is a final regulation, adopted by the Program and waiting codification. NRC has not yet reviewed the final regulation.

- "Minor Amendments," 10 CFR Part 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that is due for Agreement State implementation by March 27, 2009.

This is a final regulation, adopted by the Program and waiting codification. NRC has not yet reviewed the final regulation.

- "Medical Use of Byproduct Material – Minor Corrections and Clarification," 10 CFR Part 32 and 35 amendments (72 FR 45147, 54207), that is due for Agreement State implementation by October 29, 2010.

This is a final regulation, adopted by the Program and waiting codification. NRC has not yet reviewed the final regulation.

- "Requirements for Expanded Definition of Byproduct Material," 10 CFR Part 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72FR 55864), that is due for Agreement State implementation by November 30, 2010.

This is a final regulation, adopted by the Program and waiting codification. NRC has not yet reviewed the final regulation.

- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Part 19 and 20 amendments (72 FR 68043), that is due for Agreement State implementation by February 15, 2011.

This is a final regulation, adopted by the Program and waiting codification. NRC has not yet reviewed the final regulation.

- “Medical Use of Byproduct Material – Authorized User Clarification,” 10 CFR Part 35 amendment (74 FR 33901), that is due for Agreement State adoption by September 28, 2012.

This is a proposed regulation.

- “Decommissioning Planning,” 10 CFR Parts 20, 30, 40, and 70 (76 FR 35512), that is due for implementation by December 17, 2015.

This is a proposed regulation.

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

The Program reported that since the 2009 review, they have had a total of 9 events reported to NMED with one still open. The Program continues to monitor this event and will close it as information becomes available.

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 has placed a high emphasis on maintaining an effective response to incidents and allegations.

Status of Allegations and Concerns Referred by the NRC for Action

No allegations were formally referred by NRC during the period since the last IMPEP review.

Significant Events and Generic Implications

The Program noted they are working to deal with the storage of portable gauges at personal residences.

Current State Initiatives

None noted.

Emerging Technologies

None noted.

State's Mechanisms to Evaluate Performance

The Program uses peer reviews as a means of evaluating and improving performance in the Program. These are in used in both the licensing and inspection programs.

Annual supervisor accompaniments are performed. Other mechanisms are also used on a case-by-case basis as issues arise within the Program.

Current NRC Initiatives

NRC staff discussed current NRC initiatives with the State. This included: NRC's medical rulemaking (eg public workshops, opportunity to comment on proposed rule language); upcoming NRC training courses and training application process; guidance regarding the handling and control of sensitive information; voluntary collection of agreement state data on bans, revocations, suspensions, and denials; various NRC Enforcement Guidance memoranda; opportunity to provide comment on IMC 1248; and issuance of the final safety culture policy and availability of electronic materials for state use.

Schedule for the Next IMPEP Review

It is recommended that the next IMPEP review be held on schedule in 2 years.